राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार 25 फरवरी, 2017 / 6 फाल्गुन, 1938

हिमाचल प्रदेश सरकार

SOCIAL JUSTICE & EMPOWERMENT DEPARTMENT

NOTIFICATION

Shimla-02, *the* 18th *February,* 2017

No.SJE-F(10)-19/2000-Loose.—In partial modification of this Department Notifications No. SJE-F(10-19/2000 dated 5-11-2014, 6-9-2016, 21-7-2014 & 11-6-2014 and in exercise of the powers, conferred under Section-27 of Juvenile Justice (Care and Protection of Children) Act, 2015

(No. 2 of 2016), the Governor, Himachal Pradesh is pleased to nominate the following as Chairman/Member of Child Welfare Committees for a period of 3 years from the date of this notification for the district as under:—

District Chamba :

1.	Sh. Arun Sharma (Advocate) S/o late Shri B. P. Sharma, Mohala Kharuara, Chamba Town PO, Tehsil & Distt. Chamba,. H.P.	Chairperson

District Hamirpur :

1.	Smt. Suman Garg W/o Shri Rakesh Garg C/o Shri Pyare Lal Sanger, Conductor HRTC VPO Aghar, Tehsil Sadar, Distt. Hamirpur, H.P.	Member

District Kinnaur :

1.	Sh. Suresh Kumar Negi S/o Shri Swaroop SinghNegi, Village and Post Office Kalpa, Tehsil Kalpa, Distt. Kinnaur, H.P.	Chairperson

District Solan :

1.	Mrs. Neelam Mehta D/o Shri MS Mehta, Village Bawara PO Basal(Chambaghat) Distt. Solan, H.P.	Member
2.	Sh. Puran Chand S/o Shri Hem Raj Village Nehra PO Sainj, Sub Tehsil Dhami, Tehsil Sunni, Distt. Shimla.	Member
3.	Ms. Niranjana Kumari D/o late Shri Prem Singh, Village Frait, Post Office Shakroh, Tehsil and District Shimla, H.P.	Member
4.	Ms. Krishna D/o Late Shri Durga Ram R/o Deep Kunj, Anand Vihar, H.No. 178/12 near , District Court, Solan, H.P.	Member
5.	Sh. Ashwani Sharma S/o Shri Surender Sharma R/o DDK Building, The Mall Solan, Tehsil & Distt. Solan.	Member

District Sirmour :

1.	Smt. Lalita Devi W/o Shri Vinay Aggarwal R/o House No. 2982/11, Katcha Tank, near Partap Bhawan Nahan, H.P.	Member

By order,
ANURADHA THAKUR,
Secretary (SJ&E).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 16th *January,* 2017

No: Shram (A) 6-4/2016 (Awards)— In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No:	Case No:	Title of the Case	Date of Award
1.	07/2014	Shri Lal Singh V/S Adhilash Damodar & Ors.	33-A
2.	08/2014	Shri Mohinder Singh V/s -do-	33-A
3.	09/2014	Shri Dharam Singh V/S -do-	33-A
4.	55/2010	Shri Virender Singh V/S M/S Alliance Inc, Baddi.	10
5.	22/2016	Shri Bhushan Rai V/S M/S Indo Farm Equipment Ltd. Baddi District Solan, H.P.	10
6.	09/2013	Shri Surja Singh V/S The Manager, Ice Spice Restaurant & Bar, Solan, H.P.	10
7.	79/2015	Shri Tek Chand V/S The XEN, HPPWD, Kumarsain.	10
8.	26/2012	Shri Hukam Chand V/S The Secretary, Nagar Panchyat, Sunni District Shimla, H.P.	10
9.	28/2010	Shri Devi Ram V/S The Secretary, Nagar panchyat, Sunni District Shimla, H.P.	10
10.	32/2010	Shri Ramesh Kumar V/S –do-.	10
11.	37/2014	Shri Dhanbir Singh V/S M/S Gulshan Polypols Ltd. P/Shib District Sirmour, H.P.	10
12.	115/2010	Employees Union V/S M/S Federal Mogul Bearing India Ltd. Parwanoo.	10
13.	54/2015	Shri Pradeep Kumar V/S The Executive Engineer, HPPWD Kalpa Division, Tehsil Kalpa District Kinnaur, H.P. & Anr.	10
14.	58/2016	Shri Dharmender Kumar V/S The Executive Engineer, HPPWD Division, No.III, Shimla-4, H.P.	10
15.	26/2012	Shri Chet Ram V/S M/S MN DAV Dental college & Hospital Tatul District Solan & Anr.	10

By order,
R. D. DHIMAN, IAS,
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

App. No. 7 of 2014.

Instituted on. 3.3.2014.

Decided on 30.12.2016.

Lal Singh S/o Shri Molu Ram R/o Village Parli, P.O Kando Bhatnol,Tehsil Shillai, Sub Tehsil Rohnat, District Sirmour, HP. ...*Petitioner.*

Vs.

1. Abhilash Damodar presently working as Divisional Forest Officer, Renukaji Forest Division Renuka, District Sirmour, HP.

2. Roshan Lal Chaudhory, Presently working as Forest Range Officer, Shillai, Forest Range Shillai, District Sirmour, HP.

3. Vijay Pal Block Forest Officer under Forest Range Officer, Shillai forest Range Shillai, District Sirmour, HP. ...*Respondents.*

Application under section 33-A of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate.

For respondent **:** Ms. Reena Chauhan, Dy. DA.

ORDER

Briefly, the case of the petitioner is that he was engaged as forest worker by the forest department under Shillai Range, Division Renuka in the year, 1994 and worked as such till the year, 1999 and thereafter his services were illegally terminated by the department and as such the petitioner was forced to file the original application before the Administrative Tribunal in which the department was directed to re-engage the petitioner and accordingly he was re-engaged and worked as such till September, 2010. It is further stated that the services of the petitioner were again orally terminated by the department w.e.f. 1.10.2010 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation had been paid to him. The petitioner visited the office of DFO and Range Officer number of time for his re-engagement but of no avail and thereafter the petitioner had filed the demand notice before the Labour-cum-Conciliation Officer, Nahan and after the expiry of 45 days the claim petition has been filed directly before this Court. It is also stated that during the pendency of the claim petition, the petitioner was re-engaged by the department w.e.f. 3.1.2014 and worked as such till 20.1.2014 and thereafter his services have again been terminated which is clear cut violation of the mandatory provisions of section 33 of the Act and that the petitioner is unemployed w.e.f. 21.1.2014 and is nowhere gainfully employed. Against this back-drop a prayer has been made that the termination of the services of the petitioner w.e.f. 21.1.2014 by the respondents be held illegal and respondents be directed to re-engage the petitioner in service with full back-wages along-with seniority and continuity.

2. The respondents contested the claim of the petitioner by filing reply wherein preliminary objection has been taken that the claim is not attainable. On merits, it has been asserted that the petitioner was engaged for seasonal forestry works in Shillai Range from 1997 and the seniority list as given by Khatri Ram, the then R.O Shillai was found not based on records. It is further asserted that the petitioner worked with the department in casual manner and joined and left the work at his own sweet will and that he had not completed 240 days in the year in which he left the job. That the petitioner worked on seasonal forestry works in Shillai Range from 1994 to 2008 with intermittent breaks and after 2008 he never reported for work, hence, ceased to be a daily waged worker from 2008 and as such the services of the petitioner were never terminated by the respondents, who himself left the work without intimation and that he worked with the respondents for 10 days on bill basis during 01/2014. The respondents prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

4. Pleadings of the parties gave rise to the following issues which were struck on 29.3.2016.

1. Whether the termination of the services of the petitioner w.e.f. 21.1.2014 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*

3. Whether the petition is not maintainable as alleged? ...*OPR*

4. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Relief. Application dismissed per operative part of order.

Reasons for findings

Issues no.1.

7. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated during the pendency of the application illegally without following the mandatory provisions of section 33 of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and

since the petitioner had been terminated illegally in contravention of section 33 of the Act, the respondents may be directed to re-engage the applicant with full back-wages w.e.f. 21.1.2014 along-with seniority and continuity.

8. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner had been engaged against seasonal forestry works subject to availability of work and funds and he abandoned the seasonal work at his own without any intimation. She further contended that the petitioner had never been in continuous service and never completed 240 days in any calendar year.

9. To prove his case, the petitioner examined himself as PW-1 to depose that he was engaged as forest worker by the respondents in the year 1994 and worked continuously till the year, 2008 and thereafter his services were illegally terminated. He raised the demand notice before the Labour Inspector but nothing had happened there and then he had filed an application before this Court which was decided in his favour vide order dated 25.11.2014 Ex. PW-1/A. During the pendency of the application, he was reengaged on 3.1.2014 and worked till 20.1.2014 and thereafter again his services were terminated during the pendency of the application without issuance of any notice and compensation and after the decision of his application he was re-engaged in the month of October, 2015. He prayed that he be given seniority and continuity in service including back-wages as he was not gainfully employed after his illegal termination. In cross-examination, he admitted that presently he is working with the respondents. He denied that he had not completed 240 days in any calendar year w.e.f. 1997 to 2008 except the year, 2005. He further denied that he had left the job at his own and used to remain absent from duty. He also denied that his work was of seasonal nature and that his services were never terminated by the respondents.

10. On the other hand, the respondents examined two RWs. RW-1 Shri Vidya Sagar, Block Officer stated that the petitioner had been given seniority and continuity w.e.f. 1.1.2008 without back-wages as per the award dated 25.11.2014 Ex. PW-1/A and his services were never terminated during the pendency of the main application and he himself had abandoned the job. The petitioner re-joined the services on 14.10.2015 and is still working with the respondents. In cross-examination, he admitted that the petitioner was initially engaged in the year, 1994 and he worked till September, 2011. He denied that the services of the petitioner were terminated w.e.f. 1.10.2010. He admitted that during the pendency of application no. 42 of 2013, the petitioner was re-engaged w.e.f. 3.1.2014 and he worked till 20.1.2014. He admitted that no notice was given to the petitioner to resume his duties and no enquiry was conducted against him. He further admitted that the presence of the petitioner used to be marked in the muster roll and no muster roll with respect to the petitioner showing his absence from duties has been placed on record and no wages have been paid to him w.e.f. 20.1.2014 till 14.10.2015. He admitted that award Ex. PW-1/A has not been challenged before any Court.

11. RW-2 Shri Shyam Sunder, Senior Assistant from the office of DFO Renukaji has brought the list of daily wagers engaged from 2009 onwards, the copy of which is mark R-2, the copy of letter dated 22.7.2016 mark R-3 and the copy of list of daily wagers engaged from 2009 onwards (circle Nahan) is mark R-4. In cross-examination, he admitted that they have not made any payment to the petitioner w.e.f. 20.1.2014 till his re-engagement on 14.10.2015 and his services were not regularized till date and even his case was not sent for regularization to the government by the department.

12. After the closer scrutiny of the record of the case, it has become clear that vide award dated 25.11.2014 Ex. PW-1/A passed by this Court in reference no. 42 of 2013, the Divisional Forest Officer, Renukaji Forest Division, Sirmour was directed to reinstate the petitioner with

seniority and continuity but without back-wages. From the perusal of statement of RW-1, it is clear that the petitioner has been reinstated in service on 14.10.2015 and is still working and he has been given seniority and continuity w.e.f. 1.1.2008 without back-wages as per the aforesaid award Ex. PW-1/A. The case of the petitioner is that during the pendency of the reference no. 42 of 2013, he was re-engaged w.e.f. 3.1.2014 and his services were terminated w.e.f. 20.1.2014 in violation of section 33 of the Act as such he be given full back wages w.e.f. 21.1.2014. However vide award Ex. PW-1/A which has been passed on 25.11.2014, the backwages were denied to the petitioner on the ground that even after the termination of the petitioner he had been doing the work. Moreover, from the perusal of the evidence on record, it has become clear that the petitioner was engaged only on bill basis during the month of January 2014 and he had worked only for 10 days. No evidence has been led by the petitioner to show that during the pendency of the reference no. 42 of 2013, he was re-engaged as daily wager and completed 240 days and his services were illegally terminated by the respondents. It has further been observed in the award Ex. PW-1/A that the petitioner had not worked during the years 2009, 2010 and 2011 and there is no evidence on record that the petitioner had worked as daily wager till 20.1.2014 and it has been categorically held in the aforesaid award that the petitioner has seized to work in the year, 2008 and he had failed to prove that he had worked continuously for one year from the date of his termination as such his termination cannot be said to be in contravention of the provisions of section 25-F of the Act. The award Ex. PW-1/A has not been challenged by the petitioner before the Hon'ble High Court of HP as such it has attained finality. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

13. In the present case no evidence has been led by the petitioner to prove that he was not gainfully employed. The petitioner has failed to discharge his burden by placing any concrete material on record and by leading any cogent and satisfactory evidence that he was not gainfully employed after his termination/disengagement.

14. Therefore, in view of the entire evidence on record, it cannot be said that the termination of the petitioner w.e.f. 21.1.2014 by the respondents is illegal and unjustified and in violation of the provisions of section 33 of the Act. The petitioner is claiming seniority and continuity w.e.f. 21.1.2014 along-with full back-wages. However as observed earlier the petitioner has been re-instated in service along-with seniority and continuity w.e.f. 1.1.2008 and in view of my observation above, the petitioner is not entitled to any back-wages since 21.1.2014. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue no.2

15. For the failure of the petitioner to have proved issue no.1, this issue becomes redundant.

Issue no.3

16. To prove this issue no evidence has been led by the respondents which could show that as to how this petition is not maintainable, hence, the same is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my findings on aforesaid issues no. 1 to 3, the application filed by the petitioner is dismissed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

App. No. 8 of 2014.

Instituted on. 3.3.2014.

Decided on 30.12.2016.

Mohinder Singh S/o Shri Lal Singh R/o Village Bhatnog, Tehsil Shillai, District Sirmour, HP. ...*Petitioner.*

Vs.

1. Abhilash Damodar presently working as Divisional Forest Officer, Renukaji Forest Division Renuka, District Sirmour, HP.

2. Roshan Lal Chaudhory, Presently working as Forest Range Officer, Shillai, Forest Range Shillai, District Sirmour, HP.

3. Vijay Pal Block Forest Officer under Forest Range Officer, Shillai forest Range Shillai, District Sirmour, HP. ...*Respondents.*

Application under section 33-A of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate.

For respondent **:** Ms. Reena Chauhan, Dy. DA.

ORDER

Briefly, the case of the petitioner is that he was engaged as forest worker by the forest department in Panog beat under Shillai Range, Division Renuka in the year, 1994 and worked as such till the year, 1999 and thereafter his services were illegally terminated by the department and as such the petitioner was forced to file the original application before the Administrative Tribunal in which the department was directed to re-engage the petitioner and accordingly he was re-engaged as worked as such till September, 2010. It is further stated that the services of the

petitioner were again orally terminated by the department w.e.f. 1.10.2010 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation had been paid to him. The petitioner visited the office of DFO and Range Officer number of times for his reengagement but of no avail and thereafter the petitioner had filed the demand notice before the Labour-cum-Conciliation Officer, Nahan and after the expiry of 45 days the claim petition has been filed directly before this Court. It is also stated that during the pendency of the claim petition, the government sent the reference to this Court and the petitioner was re-engaged by the department w.e.f. 5.1.2014 and worked as such till 20.1.2014 and thereafter his services have again been terminated which is clear cut violation of the mandatory provisions of section 33 of the Act and that the petitioner is unemployed w.e.f. 20.1.2014 and is nowhere gainfully employed. Against this back-drop a prayer has been made that the termination of the services of the petitioner w.e.f. 21.1.2014 by the respondents be held illegal and respondents be directed to re-engage the petitioner in service with full back-wages along-with seniority and continuity.

2. The respondents contested the claim of the petitioner by filing reply wherein preliminary objection has been taken that the claim is not attainable. On merits, it has been asserted that the petitioner was engaged for seasonal forestry works from 1998 and the seniority list as given by Khatri Ram the then R.O Shillai was found not based of records. It is further asserted that the petitioner worked with the department in casual manner and joined and left the work at his own sweet will and that he had not completed 240 days in the year in which he left the job. That the petitioner worked on seasonal forestry works in Shillai Range from 1999 to 2008 with intermittent breaks and after 2008 he never reported for work, hence, ceased to be a daily waged worker from 2008 and as such the services of the petitioner were never terminated by the respondents, who himself left the work without intimation and that he worked with the respondents for 14 days on bill basis during 01/2014. That he was also elected the President of JFMC Dahkar during 2010 and was not unemployed. The respondents prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

4. Pleadings of the parties gave rise to the following issues which were struck on 29.3.2016.

5. Whether the termination of the services of the petitioner w.e.f. 21.1.2014 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP*

6. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*

7. Whether the petition is not maintainable as alleged? ...*OPR*

8. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Application dismissed per operative part of order.

Reasons for findings

Issues no.1.

7. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated during the pendency of the application illegally without following the mandatory provisions of section 33 of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had been terminated illegally in contravention of section 33 of the Act, the respondents may be directed to reengage the applicant with full back wages w.e.f. 21.1.2014 along-with seniority and continuity.

8. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner had been engaged against seasonal forestry works subject to availability of work and funds and he abandoned the seasonal work at his own without any intimation. She further contended that the petitioner had never been in continuous service and never completed 240 days in any calendar year.

9. To prove his case, the petitioner examined himself as PW-1 to depose that he was engaged as forest worker by the respondents in the year 1994 and worked continuously till September, 2010 and thereafter his services were illegally terminated. He raised the demand notice before the Labour Inspector but nothing had happened there and then he had filed an application before this Court which was decided in his favour vide order dated 25.11.2014 Ex. PW-1/A. During the pendency of the application, he was reengaged on 5.1.2014 and worked till 20.1.2014 and thereafter again his services were terminated during the pendency of the application without issuance of any notice and compensation and after the decision of his application he was re-engaged in the month of October, 2015. He prayed that he be given seniority and continuity in service including back-wages as he was not gainfully employed after his illegal termination. In cross-examination, he admitted that presently he is working with the respondents. He denied that he had not completed 240 days in any calendar year w.e.f. 1998 to 2008 except the year, 2005. He further denied that he had left the job at his own and used to remain absent from duty. He also denied that his work was of seasonal nature and that his services were never terminated by the respondents.

10. On the other hand, the respondents examined two RWs. RW-1 Shri Vidya Sagar, Block Officer stated that the petitioner had been given seniority and continuity w.e.f. 1.1.2008 without back-wages as per the award dated 25.11.2014 Ex. PW-1/A and his services were never terminated during the pendency of the main application and he himself had abandoned the job. The petitioner re-joined the services on 15.10.2015 and is still working with the respondents. In cross-examination, he expressed his ignorance that the petitioner was initially engaged in the year, 1994 and he worked till September, 2010. He denied that the services of the petitioner were terminated w.e.f. 1.10.2010. He admitted that during the pendency of application no. 62 of 2012, the petitioner was re-engaged w.e.f. 5.1.2014 and he worked till 20.1.2014. He admitted that no notice was given to the petitioner to resume his duties and no enquiry was conducted against him. He further admitted that the presence of the petitioner used to be marked in the muster roll and no muster roll with respect to the petitioner showing his absence from duties has been placed on record and no wages have been paid to him w.e.f. 20.1.2014 till 15.10.2015. He admitted that award Ex. PW-1/A has not been challenged before any Court.

11. RW-2 Shri Shyam Sunder, Senior Assistant from the office of DFO Renukaji has brought the list of daily wagers engaged from 2009 onwards, the copy of which is mark R-2, the copy of letter dated 22.7.2016 mark R-3 and the copy of list of daily wagers engaged from 2009 onwards (circle Nahan) is mark R-4. In cross-examination, he admitted that they have not made any payment to the petitioner w.e.f. 21.1.2014 till his re-engagement on 15.10.2015 and his services were not regularized till date and even his case was not sent for regularization to the government by the department.

12. After the closer scrutiny of the record of the case, it has become clear that vide award dated 25.11.2014 Ex. PW-1/A passed by this Court in reference no. 62 of 2013, the Divisional Forest Officer, Renukaji Forest Division, Sirmour was directed to reinstate the petitioner with seniority and continuity but without back-wages. From the perusal of statement of RW-1, it is clear that the petitioner has been reinstated in service on 15.10.2015 and is still working and he has been given seniority and continuity w.e.f. 1.1.2008 without back-wages as per the aforesaid award Ex. PW-1/A. The case of the petitioner is that during the pendency of the reference no. 62 of 2013, he was re-engaged w.e.f. 5.1.2014 and his services were terminated w.e.f. 20.1.2014 in violation of section 33 of the Act as such he be given full back wages w.e.f. 21.1.2014. However vide award Ex. PW-1/A which has been passed on 25.11.2014, the backwages were denied to the petitioner on the ground that even after the termination of the petitioner he had been doing the work. Moreover, from the perusal of the evidence on record, it has become clear that the petitioner was engaged only on bill basis during the month of January 2014 and he had worked only for 14 days. No evidence has been led by the petitioner to show that during the pendency of the reference no. 62 of 2013, he was re-engaged as daily wager and completed 240 days and his services were illegally terminated by the respondents. It has further been observed in the award Ex. PW-1/A that the petitioner had not worked during the years 2009 and 2010 and there is no evidence on record that the petitioner had worked as daily wager till 20.1.2014 and it has been categorically held in the aforesaid award that the petitioner has seized to work in the year, 2008 and he had failed to prove that he had worked continuously for one year from the date of his termination as such his termination cannot be said to be in contravention of the provisions of section 25-F of the Act. The award Ex. PW-1/A has not been challenged by the petitioner before the Hon'ble High Court of HP as such it has attained finality. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

13. In the present case no evidence has been led by the petitioner to prove that he was not gainfully employed. The petitioner has failed to discharge his burden by placing any concrete material on record and by leading any cogent and satisfactory evidence that he was not gainfully employed after his termination/disengagement.

14. Therefore, in view of the entire evidence on record, it cannot be said that the termination of the petitioner w.e.f. 21.1.2014 by the respondents is illegal and unjustified and in violation of the provisions of section 33 of the Act. The petitioner is claiming seniority and continuity w.e.f. 21.1.2014 along-with full back-wages. However as observed earlier the petitioner has been re-instated in service along-with seniority and continuity w.e.f. 1.1.2008 and in view of my observation above, the petitioner is not entitled to any back-wages since 21.1.2014. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue no.2

15. For the failure of the petitioner to have proved issue no.1, this issue becomes redundant.

Issue no.3

16. To prove this issue no evidence has been led by the respondents which could show that as to how this petition is not maintainable, hence, the same is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my findings on aforesaid issues no. 1 to 3, the application filed by the petitioner is dismissed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2016.

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

App. No. 9 of 2014.

Instituted on. 3.3.2014.

Decided on 30.12.2016.

Dharam Singh S/o Shri Surat Singh R/o Village Panog, Tehsil Shillai, Sub Tehsil Rohnat, District Sirmour, HP. ...*Petitioner.*

Vs.

1. Abhilash Damodar presently working as Divisional Forest Officer, Renukaji Forest Division Renuka, District Sirmour, HP.
2. Roshan Lal Chaudhory, Presently working as Forest Range Officer, Shillai, Forest Range Shillai, District Sirmour, HP.
3. Vijay Pal Block Forest Officer under Forest Range Officer, Shillai forest Range Shillai, District Sirmour, HP. ...*Respondents.*

Application under section 33-A of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate.

For respondent **:** Ms. Reena Chauhan, Dy. DA.

ORDER

Briefly, the case of the petitioner is that he was engaged as forest worker by the forest department in Panog beat under Shillai Range, Division Renuka in the year, 1999 and worked as such till the year, 2000 and thereafter his services were illegally terminated by the department and as such the petitioner was forced to file the original application before the Administrative Tribunal in which stay was granted in favour of the petitioner and the department was directed to re-engage the petitioner in same post and accordingly he was re-engaged as worked as such under different beats till August, 2011. It is further stated that the services of the petitioner were again orally terminated by the department w.e.f. 1.9.2011 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation had been paid to him and even the department had not paid full wages for the month of August, 2011. The petitioner visited the office of DFO and Range Officer number of times for his re-engagement but of no avail and thereafter the petitioner had filed the demand notice before the Labour-cum-Conciliation Officer, Nahan and after the expiry of 45 days the present claim petition has been filed directly before this Court. It is also stated that during the pendency of the claim petition, the petitioner was reengaged by the department w.e.f. 26.12.2013 and worked as such till 28.1.2014 and thereafter his services have again been terminated which is clear cut violation of the mandatory provisions of section 33 of the Act and that the petitioner is unemployed w.e.f. 29.1.2014 and is nowhere gainfully employed. Against this back-drop a prayer has been made that the termination of the services of the petitioner w.e.f. 28.1.2014 by the respondents be held illegal and respondents be directed to re-engage the petitioner in service with full back-wages along-with seniority and continuity.

2. The respondents contested the claim of the petitioner by filing reply wherein preliminary objection has been taken that the claim is not attainable. On merits, it has been asserted that the petitioner was engaged for seasonal forestry works in Shillai Range of Renukaji Forest Division from 1999 and he was again reengaged for seasonal forestry works and worked on bill basis for 5 days in December, 2013 and 8 days in Jan., 2014 and thereafter the petitioner himself stopped to come to work with the plea that he would come to work if the department will provide the work during the entire year but as per seasonal works budget provisions, it is not possible to provide work to the petitioner in the entire year and the seniority list as given by Khatri Ram the then R.O Shillai was found not based on record. It is further asserted that the petitioner worked with the department in casual manner and joined and left the work at his own sweet will and that he had not completed 240 days in the year in which he left the job. That the petitioner worked on seasonal forestry works in Shillai Range from 1999 to 2008 with intermittent breaks and after 2008 he never reported for work, hence, ceased to be a daily waged worker from 2008 and as such the services of the petitioner were never terminated by the respondents, who himself left the work without intimation and that he worked with the respondents for 13 days on bill basis during 12/2013 and 01/2014. The respondents prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

4. Pleadings of the parties gave rise to the following issues which were struck on 29.3.2016.

9. Whether the termination of the services of the petitioner w.e.f. 28.1.2014 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP*

10. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*

11. Whether the petition is not maintainable as alleged? …OPR

12. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Application dismissed per operative part of order.

Reasons for findings

Issues no.1.

7. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated during the pendency of the application illegally without following the mandatory provisions of section 33 of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had been terminated illegally in contravention of section 33 of the Act, the respondent may be directed to reengage the applicant with full back-wages w.e.f. 29.1.2014 along-with seniority and continuity.

8. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner had been engaged against seasonal forestry works subject to availability of work and funds and he abandoned the seasonal work at his own without any intimation. She further contended that the petitioner had never been in continuous service and never completed 240 days in any calendar year.

9. To prove his case, the petitioner examined himself as PW-1 to depose that he was engaged as forest worker by the respondents in the year 1999 and worked continuously till August, 2011 and thereafter his services were illegally terminated. He raised the demand notice before the Labour Inspector but nothing had happened there and then he had filed an application before this Court which was decided in his favour vide order dated 2.1.2015 Ex. PW-1/A. During the pendency of the application, he was reengaged on 26.12.2013 and worked till 28.1.2014 and thereafter again his services were terminated during the pendency of the application without issuance of any notice and compensation and after the decision of his application he was re-engaged in the month of October, 2015. He prayed that he be given seniority and continuity in service including back-wages as he was not gainfully employed after his illegal termination. In cross-examination, he admitted that presently he is working with the respondents. He denied that he had not completed 240 days in any calendar year w.e.f. 1999 to 2008 except the year, 2005 and that he had worked with the respondents on bill basis in December, 2013 for 5 days and in Jan., 2014 for 8 days. He further denied that he had left the job at his own and used to remain absent from duty. He also denied that his work was of seasonal nature and that his services were never terminated by the respondents.

10. On the other hand, the respondents examined two RWs. RW-1 Shri Vidya Sagar, Block Officer stated that the petitioner had been given seniority and continuity w.e.f. 1.9.2011 without back-wages as per the award dated 2.1.2015 Ex. PW-1/A and his services were never terminated during the pendency of the main application and he himself had abandoned the job. The petitioner re-joined the services on 12.10.2015 and is still working with the respondents. In cross-examination, he admitted that the petitioner was initially engaged in the year, 1999 and he worked till August, 2011. He denied that the services of the petitioner were terminated w.e.f. 1.9.2011. He admitted that during the pendency of application no. 65 of 2012, the petitioner was re-engaged w.e.f. 26.12.2013 and he worked till 28.1.2014. He admitted that no notice was given to the petitioner to resume his duties and no enquiry was conducted against him. He further admitted that the presence of the petitioner used to be marked in the muster roll and no muster roll with respect to the petitioner showing his absence from duties has been placed on record and no wages have been paid to him w.e.f. 28.1.2014 till 12.10.2015. He admitted that award Ex. PW-1/A has not been challenged before any Court.

11. RW-2 Shri Shyam Sunder, Senior Assistant from the office of DFO Renukaji has brought the list of daily wagers engaged from 2009 onwards, the copy of which is mark R-2, the copy of letter dated 22.7.2016 mark R-3 and the copy of list of daily wagers engaged from 2009 onwards (circle Nahan) is mark R-4. In cross-examination, he admitted that they have not made any payment to the petitioner w.e.f. 29.1.2014 till his re-engagement on 12.10.2015 and his services were not regularized till date and even his case was not sent for regularization to the government by the department.

12. After the closer scrutiny of the record of the case, it has become clear that vide award dated 2.1.2015 Ex. PW-1/A passed by this Court in application no. 65 of 2012, the Divisional Forest Officer, Renukaji Forest Division, Sirmour and Forest Range Officer, Shillai were directed to reinstate the petitioner with seniority and continuity but without backwages. From the perusal of statement of RW-1, it is clear that the petitioner has been reinstated in service on 12.10.2015 and is still working and he has been given seniority and continuity w.e.f. 1.9.2011 without back-wages as per the aforesaid award Ex. PW-1/A. The case of the petitioner is that during the pendency of the application no. 65 of 2012, he was re-engaged w.e.f. 26.12.2013 and his services were terminated w.e.f. 28.1.2014 in violation of section 33 of the Act as such he be given full back wages w.e.f. 28.1.2014. However vide award Ex. PW-1/A which has been passed on 2.1.2015, the back-wages were denied to the petitioner on the ground that even after the termination of the petitioner he had been doing the work. Moreover, from the perusal of the evidence on record, it has become clear that the petitioner was engaged only on bill basis during the months of 12/2013 and 1/2014 and he had worked only for 13 days. No evidence has been led by the petitioner to show that during the pendency of the application no. 65 of 2012, he was reengaged as daily wager and completed 240 days and his services were illegally terminated by the respondents and there is no evidence on record that the petitioner had worked as daily wager till 28.1.2014 and it has been categorically held in the aforesaid award that the petitioner has failed to prove that he had worked continuously for 240 days in the preceding one year from the date of his termination as such his termination cannot be said to be in contravention of the provisions of section 25-F of the Act. The award Ex. PW-1/A has not been challenged by the petitioner before the Hon'ble High Court of HP as such it has attained finality. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

13. In the present case no evidence has been led by the petitioner to prove that he was not gainfully employed. The petitioner has failed to discharge his burden by placing any concrete material on record and by leading any cogent and satisfactory evidence that he was not gainfully employed after his termination/disengagement.

14. Therefore, in view of the entire evidence on record, it cannot be said that the termination of the petitioner w.e.f. 28.1.2014 by the respondents is illegal and unjustified and in violation of the provisions of section 33 of the Act. The petitioner is claiming seniority and continuity w.e.f. 29.1.2014 along-with full back-wages. However as observed earlier the petitioner has been re-instated in service along-with seniority and continuity w.e.f. 1.9.2011 and in view of my observation above, the petitioner is not entitled to any back-wages since 29.1.2014. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue no.2

15. For the failure of the petitioner to have proved issue no.1, this issue becomes redundant.

Issue no.3

16. To prove this issue no evidence has been led by the respondents which could show that as to how this petition is not maintainable, hence, the same is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my findings on aforesaid issues no. 1 to 3, the application filed by the petitioner is dismissed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2016.

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref. 55/2010 Virender Singh V/S M/S Alliance Inc. Baddi.

13.12.2016.

Present : Shri J.C. Bhardwaj, AR for Petitioner.
Shri Rajeev Sharma, Advocate. For respondent.

At this stage, it has been stated by the petitioner that he had entered into a compromise with the respondent and had accepted a sum of ` 50,000/- (₹ Fiftey Thousand only) by way of cheque no. 048861 dated 21.12.2016 drawn of allahabad Bank, Chandigarh Branch towards full & final settlement of his claim arising out of reference no. 55 of 2010 and he shall have no further claim against the respondent and reference be decided accordingly. To this effect his statement recorded separately.

Vide separate statement, Shri Sanjay Basli, Plant Head has stated the respondent has entered into a compromise with the petitioner towards his full & final settlement of the claim arising out of reference no. 55 of 2010 and paid him a sum of ₹ 50,000/- (₹ Fifty Thousand only) by way of cheque no. 048861 dated 21.12.2016 drawn on Allahabad Bank, Chandigarh branch and the reference be decided accordingly.

Therefore, in view of the statements of the parties, since the petitioner has settled the dispute with the respondent company in full & final settlement of the claim arising out of reference no. 55 of 2010, the present reference is answered in terms of aforesaid statements of the parties, which shall from part the award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File after completion, be consigned to records.

Announced:
13.12.2016.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 22/2016 Bhushan Rai V/S M/S Indo Farm Equipment Ltd. Baddi Distt. Solan H.P.

13.12.2016.

Present : None for the petitioner.

Shri H.R Thakur, Advocate for respondent.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for the service of the petitioner. The record reveals that the notices issued for the service of the petitioner on the given address of reference itself, have not been received back either served or un-served. The record further reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court and on 6.10.2016 Shri H.R Thakur, Advocate appeared on behalf of respondent but since none appeared on behalf of the petitioner, again notice was issued to the petitioner to appear before this Court on 9.11.2016 on which date again notice for the service of the petitioner was issued returnable for 13.12.2016 but despite that notice has not been received back either served or un-served. From the perusal of the record, it is clear that the notices have been issued for the service of petitioner for seven times, however, despite that he has failed to appear before this Court. Moreover, the appropriate government has also sent a copy of the reference to the petitioner on the address provided by him during conciliation proceedings which means that he is having the knowledge about the pendency of the reference before this Court but despite that he has failed to appear before this Court. Hence, to issue notice again for the service of the petitioner and to further adjourn the case would be a futile exercise.In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"Whether termination of the services of Shri BhushanRai S/o Shri SaryugRai, Village Hashilpur, P.O nayasgaon, Tehsil & District ChappraSharan (Bihar) C/o Shri Satish Sharma 144, Phase-1 Housing Board Colony, Baddi District Solan, HP w.e.f. 28.8.2014

by the management of M/s Indo Farm Equipment Ltd., EPIP Phase-II, Village Thana Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From the aforesaid reference is the clear that the petitioner has alleged his termination w.e.f. 28.8.2014to be illegal and unjustified but despite issuance of several notices on the given address of reference, none appeared on behalf of petitioner. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent w.e.f. 28.8.2014. Hence, the reference is answered against the petitioner and the award is passed accordingly. However, liberty is granted to the petitioner to agitate the present matter by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
13.12.2016.

(SUSHILKUKREJA)
Presiding Judge,
Labour Court, Shimla.

Ref. No. 9/2013 Surjan Singh V/S The Manager, Ice Spic Restarant & Bar, Solan H.P.
13.12.2016.

Present : Petitioner with Shri Sasndeep Sharma, Advocate.

Shri Dheeraj Chaudhory, Partner of respondent Hotel with Shri Rahul Mahajan, Advocate.

At this stage, it has been stated by Shri DheerajChaudhory, Partner of respondent Hotel that the respondent is ready and willing to pay a sum of ₹ 90,000/- (₹ Ninety Thousand only) to the petitioner in full & final settlement of his claim arising out of reference no. 9 of 2013 and the aforesaid amount shall be paid in three installments on or before 31.3.2017 otherwise the same shall carry interest @ 9 % per annum. To this effect his statement recorded separately.

Vide separate statement, the petitioner has stated that the aforesaid amount is acceptable to him in full & final settlement of his claim arising out of reference no. 9 of 2013 and thereafter he shall have no claim against the respondent with respect to any service benefits and the reference be answered accordingly.

Therefore, in view of the statements of the parties, I am satisfied that before this Court a lawful compromise has been effected between the parties and as such the respondent is directed to pay a sum of ₹ 90,000/- (₹ Ninety Thousand only) to the petitioner in three installments on or before 31.3.2017 as full and final settlement of his claim arising out of reference no. 9 of 2013 otherwise the same shall carry interest @ 9% per annum. The reference stands answered in terms of statements of the parties which shall form part of this order/award. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
13.12.2016.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 79 of 2015.

Instituted on. 19.11.2015.

Decided on 13.12.2016.

Tek Chand S/o Shri Dharam Dass R/o Village Dumehrar, P.O Kadharghat, Tehsil Sunni, District Shimla, HP. ...*Petitioner.*

Vs.

1. The Executive Engineer, HPPWD Kumarsain Division District Shimla, HP.

2. The Executive Engineer, HPPWD Division Dhami, Tehsil Sunni, District Shimla, HP.
...*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondents **:** Ms. Reena Chauhan, Dy. DA.

AWARD

The following reference has been sent by the appropriate government for adjudication :

"Whether termination of services of Shri Tek Chand S/o Shri Dharam Dass R/o Village Dumehar, P.O Kadharghat, Tehsil Sunni District Shimla, HP by The Executive Engineer, HPPWD Division Kumarsain District Shimla HP w.e.f. 31.12.1990 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 15 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that in the year, 1990, he was appointed as daily wager in HPPWD Sub Division Jalog, District Shimla and completed 248 days in the calendar year and at that time the Sub Division Jalog was under division Kumarsain and now is under division Dhami. The petitioner was disengaged on 31.12.1990 without any notice and that too without applying procedure. It is further stated that juniors S/Shri Jeet Ram, Nokh Ram, Kamlesh Kumar, Bhimi Ram, Yog Ram, Dev Raj, Khem Raj, Prem Singh, Daleep Kumar etc. were engaged in the years 1991, 1994 and 1998 and their services have been regularized by the respondent and even more than 40 persons have been given regular appointments who were junior to the petitioner and his services were terminated without following the principle of "last come first go". That after the termination, the petitioner was mentally ill and was under treatment till 2005 and in the year, 2005, he submitted demand notice which was rejected by the Labour Commissioner on the ground of delay and latches and thereafter the petitioner challenged the same before the Hon'ble High Court which was dismissed by the Single bench and then the same was challenged before the Division Bench by way of LPA no. 152 of 2015 which was allowed with the direction to the Labour Commissioner to refer the same to this Court. It is also stated that before the termination of the

petitioner, the department neither served any notice of termination nor any re-engagement letter had been served to him and even no chargesheet, show cause notice and retrenchment compensation as required under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) was given to him. The petitioner is still un-employed from the date of his termination and there is sufficient work available with the respondents. Against this back-ground a prayer has been made that he be ordered to be reinstated in service with backwages and other consequential service benefits including regularization.

3. The respondents contested the claim of the petitioner by filing reply wherein preliminary objections have been taken qua maintainability, estoppel and delay of more than 15 years. On merits, it has been asserted that initially the petitioner was engaged as daily wager mate w.e.f. 1.1.1990 in HPPWD Sub Division Sunni and completed 242 days in the year, 1990 and thereafter left the job after September, 1990 and he had never approached the respondents for his re-engagement except by raising demand notice dated 24.8.2006 which has been rejected by the department on the ground that his services were never terminated by the respondents at any point of time, hence, there is no violation of any provision of the Act. Even, the present claim has been filed by the petitioner after a lapse of more than 15 years. It is further asserted that to carry out various development works, the respondents engaged some juniors to the petitioner so that the work may not hamper/suffer and even the petitioner and his family members never informed the department about his ailment as alleged and this fact had also not been mentioned in demand notice and no medical certificate was submitted by him about his illness and now neither the work is available not the funds are available to engage any fresh hand. Moreover, the job of daily wager mate does not require any extra ordinary sincerity or devotion and so far as the working is concerned, there is no such provision to keep any record of the working of the casual labour mate as the engagement was purely on seasonal nature on coterminus basis and also depends upon the will of individual to continue to work or not. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 25.4.2016.

13. Whether the termination of the services of the petitioner w.e.f. 31.12.1990 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP*

14. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled? ...*OPP*

15. Whether the petition is not maintainable as alleged? ...*OPRs*

16. Whether the petition is time barred as alleged? ...*OPRs*

17. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service from the date when the petitioner raised demand notice *i.e w.e.f.* 24.8.2006 with seniority and continuity but without back wages.

Issue no.3 No.

Issue no.4 No.

Relief. Reference partly answered in favour of the petitioner and against the respondents per operative part of award.

Reasons for findings

Issues no.1 & 4.

7. Being interlinked and co-related, both these issues are taken up together for discussion and decision.

8. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had completed 242 days in twelve calendar months preceding his termination and as such his termination without issuance of any notice and without payment of compensation is against the provisions of the Act. He also contended that the persons junior to the petitioner have been retained and fresh hands have been engaged in violation of the provisions of section 25-G & 25-H of the Act. He contended that due to psychiatric disorder, the petitioner was unable to raise the demand notice immediately after his termination and the same was raised by him in the year, 2005 after recovery from illness.

9. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner had never been terminated by the respondents who himself abandoned his job without intimation to the respondents. She further contended that even no intimation was given by the petitioner about his illness and that he filed the present claim after a lapse of 15 years. She also contended that to carry out development works, the services of some persons have been engaged after 1991 and since the petitioner left the job at his own, hence, he is not entitled to any relief at this belated stage.

10. To prove his case, the petitioner examined three PWs. He himself appeared into the witness box as PW-1 to depose that he was engaged as mate on 1.1.1990 in HPPWD Division Kumarsain and worked till 31.12.1990 and thereafter his services were terminated without issuing any show cause notice, chargesheet and conducting any enquiry. He had completed 242 days in a calendar year and his juniors namely S/Shri Jeet Ram, Nokh Ram, Kamlesh Kumar, Bhimi Ram, Yog Ram, Dev Raj, khem Raj, Prem Singh, Roop Lal, Dalip Kumar and Lal Chand etc. were retained and later on regularized by the department. He remained ill and was under treatment in IGMC Shimla and Dharampur. Ex. PW-1/A is his mandays chart for the year, 1990. In cross-examination, he denied that he left the job at his own and that he had not approached the department after 31.12.1990. He admitted that he had raised the demand notice in the year, 2006 after a gap of 15 years. He denied that he had not intimated the department about his illness but admitted that he had not submitted any medical certificate regarding his illness to the department. He further denied that the department had not terminated his services.

11. PW-2 Shri Prem Lal, Senior Assistant, HPPWD has stated that the petitioner was engaged as mate on 1.1.1990 and worked as such till September, 1990. He had completed 242 days in the year, 1990. The sub Division Sunni and Jalog were earlier under the Division Kumarsain and now the same are under the Shimla Rural Division Dhami which has been recently created.

12. PW-3 Shri Tej Ram, Senior Assistant, HPPWD deposed that S/Shri Jeet Ram, Yog Raj, Khem Raj, Bhimi Ram, Prem Singh, Kamlesh were engaged as beldars in the year, 1995 and they are still working with their department and have been regularized. In crossexamination, he deposed that the aforesaid persons have been continuously working since 1995 without any break and as such they have been regularized as per the policy of the State Government. He expressed his ignorance that whether any junior to the petitioner under Sub Division Sunni had either been appointed or retained.

13. On the other hand, the respondents examined RW-1 Shri Jitender Dutt, Assistant Engineer, HPPWD Sub Division Sunni, who tendered in evidence his affidavit Ex, RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B, copy of demand notice Ex. RW-1/C, copy of reply to demand notice Ex. RW-1/C and copy of writ petition filed by the petitioner before the Hon'ble High Court mark X. In cross-examination, he denied that the services of the petitioner have been terminated in October, 1990 and that he used to visit their office thereafter but he was not allowed to work. He further denied that petitioner was ill after they year, 1991 and he submitted discharge slip in their office. He admitted that junior persons have been retained and fresh hands have been engaged after the year, 1990.

14. After the closer scrutiny of the record of the case, it has become clear that the services of the petitioner have been engaged as daily waged mate by the respondents in the month of Jan., 1990 and he worked as such till September, 1990 as is evident from the mandays chart Ex. PW-1/A. 12. The first question which arises for consideration before this Court is as to whether the petition is time barred. It is not in dispute that the petitioner had worked till September, 1990 with the respondents and he raised the industrial dispute before Labour-cum-Conciliation Officer, Shimla on 24.8.2006 after a gap of about 15 years. The law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in ***Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another (1999) 6 SCC 82,*** *as under:—*

> ***"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

It has also been held by the Hon'ble Supreme Court in **Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496** that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue. In a latest judgment, the **Hon'ble Supreme Court in 2014, 10 SCC 301 titled as Raghubir Singh Vs. General Manager, Haryana Roadways Hissar** has held that Limitation Act has no application to reference made by the appropriate government to Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. The relevant portion of the aforesaid judgment is reproduced as under:

> "16. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka it was held by this Court as follows:**

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....."(Emphasis supplied).

17. In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer".

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. In the back-ground of the aforesaid legal position, in the instant case, the services of the petitioner were terminated in September, 1990 and he raised the Industrial Dispute and the matter was referred to Labour-cum-Conciliation Officer, who submitted the failure report of the Labour Commissioner. However, the Labour Commissioner refused to make the reference on the ground of delay and latches. Thereafter, the petitioner filed writ petition before the Hon'ble High Court of HP which was dismissed and then he filed LPA before the Hon'ble High Court wherein the Hon'ble High Court directed the Labour Commissioner to make the reference to the Labour Court-cum-Industrial Tribunal and thereafter the present reference has been received by this Court for adjudication. Moreover, it is not the case of the respondents that due to the delay in raising the industrial dispute, there is any loss or unavailability of material evidence. Hence, it cannot be said that delay in raising the industrial dispute is fatal to the reference and as such the petitioner cannot be debarred from claiming the relief from his employer and mere delay in challenging the termination would not be a bar to the adjudication of the present dispute which has been referred to this Court by the appropriate government.

16. The next contention raised on behalf of the petitioner to this effect that he had worked for 242 days in the year, 1990 i.e in twelve calendar months preceding his termination, but no notice as contemplated under section 25-F of the Act has been issued to the petitioner before terminating his services. Undisputedly, the petitioner had worked for 242 days in the year, 1990 and no notice under section 25-F was served upon him before terminating his services. Since, the petitioner had completed 240 working days in twelve calendar months preceding his termination, hence, before terminating his services, it was incumbent upon the respondents to have complied

with the provisions of section 25-F of the Act. Moreover, the provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under :

> "34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant- Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

In the present case also the respondents had not complied with the conditions precedent to the retrenchment as per section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner by the respondents without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

17. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". It has been admitted by RW-1 Shri Jitender Dutt, Assistant Engineer, that junior persons have been retained and fresh hands have been engaged after the year, 1990. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained and fresh hands have been engaged by the respondents department while terminating him which is clear cut violation of the provisions of section 25-G and 25-H of the Act. Moreover, there is nothing on record which could go to show that before engaging fresh hands, the petitioner was called to resume his duties. **In 2007 LLR 72, State of Haryana Vs. Dilbagh Singh,** it has been held by the Hon'ble Apex Court that where persons junior to a workman were, still working with management, termination of services of workman being in violation of sections 25-G and 25-H of the Industrial Disputes Act providing for procedure for retrenchment and re-employment of retrenched workers will not be valid and legal.

18. In the present case also, the petitioner has duly proved that after the termination of his services, juniors have been engaged/retained by the respondent and no notice was given to the petitioner by the respondents at any point of time calling upon him for his reemployment before the engagement of fresh hands and as such the termination of services of the petitioner by the respondents in violation of the provisions of sections 25-G and 25-H of the Act is improper and unjustified.

19. The learned ADA for the respondent next contended that the petitioner had left the job at his own without any intimation to the respondents department. However, there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no

notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondents. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it has been held that :

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

Hence, in view of the law laid down (supra), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own.

20. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 31.12.1990, by the respondents without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are decided infavour of the petitioner and against the respondents.

Issue no.2.

21. Since I have held under issues no.1 & 4 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified. Now, it has to be seen as to what service benefits the petitioner is entitled to. Admittedly, the present dispute has been raised by the petitioner after a gap of 15 years, hence, keeping in view all the facts and circumstances of the case, the petitioner is held entitled to reinstatement in service with seniority and continuity with effect from the date when he raised the demand notice.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex**

Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

> "16 ……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..."

24. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Moreover, the petitioner had raised the present dispute after a gap of about 15 years, hence, the back-wages cannot be granted to him after such a long gap of 15 years. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

25. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity with effect from the date when he raised the demand notice i.e w.e.f. 24.8.2006. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 13th Day of December, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 26 of 2010.

Instituted on. 12.4.2010.

Decided on 8.12.2016.

Hukam Chand S/o Shri Chimnu Ram R/o Village Juni, P.O juni, District Shimla, HP.
...Petitioner.

Vs.

The Secretary Nagar Panchyat Sunni, District Shimla, HP. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri B.R Kashyap, Advocate.

For respondent **:** Ms. Rani Thakur, Advocate vice Shri Ajay Chandel, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication :

"Whether termination of the services of Shri Hukam Chand S/o Shri Chimnu Ram by The Secretary Nagar Panchyat Sunni, Tehsil Sunni, District Shimla, HP w.e.f. 1.6.2008 without following the provisions of the Industrial Disputes Act, 1947 and retaining junior workmen and engaging freshers as alleged by the workman is proper and justified? If not, what relief of service benefits and compensation the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that initially he was appointed as daily wager beldar in the month of July, 2002 and worked continuously to the utmost satisfaction of his superiors till 31.5.2008 but his services were orally terminated w.e.f. 1.6.2008 without assigning any reason and that while terminating the services of the petitioner, he was given assurance that on the availability of work and funds, he would be re-engaged. He had completed 240 days in twelve calendar months preceding his termination but the mandatory provisions of section 25-F had not been complied with and the action of the respondent in not counting the vacation/holidays as working days has rendered itself invalid, inoperative and ineffective in the eyes of law. It is further stated that the petitioner has unblemished record of service and he never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but of no avail and ultimately, the petitioner was compelled to raise industrial dispute challenging his verbal termination order and the conciliation meetings failed due to unreasoned attitude of the respondent. Against this back-ground, a prayer has been made that the direction be issued to the respondent to re-instate the petitioner in service with retrospective effect along-with all consequential benefits including back-wages.

3. The respondent contested the claim of the petitioner by filing reply wherein it has been asserted that the petitioner was engaged against the development activities on temporary basis by the respondent in the year, 2003 and he had not completed 240 days in twelve calendar months, hence, the question of termination or retrenchment does not arise and even no assurance was given for his re-engagement and no person had been engaged against any work. The petitioner was never appointed as beldar by the respondent but he was engaged on temporary basis against development activities and even the respondent had not engaged any person work, hence, the principle of "last come first go" is not applicable. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 4.3.2014.

1. Whether the termination of the services of the petitioner w.e.f. 1.6.2008 is improper and unjustified as alleged? ...*OPP*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*

3. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no.1.

7. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had completed 240 days in each calendar year, his termination without issuance of any notice and without payment of compensation is against the provisions of the Act. He also contended that the persons junior to the petitioner have been retained and fresh hands have been engaged in violation of the provisions of section 25-G & 25-H of the Act.

8. On the other hand, learned counsel for the respondent contended that the services of the petitioner had been engaged against the development activities on temporary basis subject to availability of work and funds, hence, the question of terminating his services does not arise. He further contended that the petitioner had not completed 240 days in any calendar year and no junior to him had been retained and no fresh hands have been engaged by the respondent.

9. To prove his case, the petitioner examined two PWs. He himself appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition including that in the year, 2002, he had joined in the office of Tehsildar Sunni-cum Secretary Nagar Panchyat as beldar and continued as such till 31.5.2008 and also completed 240 days in each calendar year and that he used to work as per muster roll issued by the Secretary Nagar Panchyat and after putting his attendance he used to work with other beldars and in the year 2008, he had been thrown out of the service by the respondent without prior intimation and notice. That thereafter his services were outsourced with the contractor and he continued in the same office with the Secretary Nagar Panchyat till 2013-14 and the payment was used to be made by the contractor and he used to work as per the availability of work. In cross-examination, he expressed his ignorance that he was engaged against the development activities on temporary basis by the respondent in the year, 2003 for the month of April against muster roll no. 89 for the protection of path leading to farm in ward no. 4 for 28 days, in the month of July against the muster roll no. 96 for the work of retaining wall near Nagar Panchyat Office for 25 days, in the month of November against muster roll no. 104 for construction

of guest house (water supply and sanitary fitting) for 21 days and in December, 2003 against muster roll no. 109 for 30 days. He also expressed his ignorance that he had worked for 124 days in the year, 2004, 154 days in the year, 2005, 132 days in the year, 2006, 157 days in the year, 2008 and 71 days in the year 2008. He denied that he had not worked continuously and that his services had been engaged on temporary basis. He further denied that he was not engaged as beldar and that no junior to him was retained by the respondent.

10. PW-2 Shri Himesh Kumar, Junior Assistant office of Nagar Panchyat Sunni stated that as per record the detail of working days of the petitioner is Ex. PW-2/A and the same is prepared by him on the basis of record. In cross-examination, he admitted that the petitioner had not completed 240 days in any calendar year. He also admitted that the petitioner was engaged for specific work when it was available.

11. On the other hand, the respondent examined RW-1 Shri Sant Ram, Tehsildar Sunni, who stated that he was holding the additional charge of Secretary Nagar Panchyat Sunni and the petitioner had worked against development activities intermittently as and when the work was available. No junior to the petitioner was retained by the respondent and the petitioner had not completed 240 days in any calendar year and he had worked as per the mandays chart Ex. PW-2/A. In cross-examination, he admitted that no notice was issued to the petitioner prior to his termination. He denied that the petitioner had been working with the respondent continuously for the last ten years.

12. After the closer scrutiny of the record of the case, it has become clear that the service of the petitioner had been engaged by the respondent w.e.f. April, 2003 as is evident from the mandays chart Ex. PW-2/A. No doubt, the petitioner has claimed that he was engaged by the respondent as daily paid worker in the month of July, 2002 but he has failed to lead any documentary evidence in support of his such assertion which could go to show that his services had been engaged in the month of July, 2002. As per mandays chart Ex. PW-2/A, it is abundantly clear that the petitioner had worked for 104 days in the year, 2003, 124 days in the year 2004, 154 days in the year 2005, 132 days in the year, 2006, 157 days in the year 2007 and 71 days in the year 2008. Therefore, from the perusal of mandays chart Ex. PW-2/A, it is clear that the petitioner had worked with the respondent till May, 2008 and he had failed to complete 240 days in any calendar year and in twelve calendar months preceding his termination. There is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under :

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgments produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

13. From the perusal of mandays chart, Ex. PW-2/A, it is abundantly clear that the petitioner had not completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and engaged fresh hands, who are still working with the respondent as such the respondent had violated the provisions of section 25-G & 25-H of the Act. However, no cogent and satisfactory evidence has been led by him to prove that the persons junior to him have been retained and fresh hands have been engaged by the respondent. Therefore in the absence of any cogent and satisfactory evidence on record, it cannot be said that the respondent had retained juniors to the petitioner and engaged fresh hands as such the case of the petitioner does not fall under section 25-G and 25-H of the Act. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

15. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Relief.

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 8th day of December, 2016.

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 28 of 2010.

Instituted on. 12.4.2010.

Decided on 8.12.2016.

Devi Ram S/o Shri Lekh Ram R/o Village Benswa, P.O Reog, Tehsil Sunni, District Shimla, HP. ...*Petitioner.*

Vs.

The Secretary Nagar Panchyat Sunni, District Shimla, HP. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri B.R Kashyap, Advocate.

For respondent **:** Ms. Rani Thakur, Advocate vice Shri Ajay Chandel, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication :

"Whether termination of the services of Shri Devi Ram S/o Shri Lekh Ram by The Secretary Nagar Panchyat Sunni, Tehsil Sunni, District Shimla, HP w.e.f. 1.6.2008 without following the provisions of the Industrial Disputes Act, 1947 and retaining junior workmen and engaging fresher's as alleged by the workman is proper and justified? If not, what relief of service benefits and compensation the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that initially he was appointed as daily wager beldar in the month of July, 2002 and worked continuously to the utmost satisfaction of his superiors till 31.5.2008 but his services were orally terminated w.e.f. 1.6.2008 without assigning any reason and that while terminating the services of the petitioner, he was given assurance that on the availability of work and funds, he would be re-engaged. He had completed 240 days in twelve calendar months preceding his termination but the mandatory provisions of section 25-F had not been complied with and the action of the respondent in not counting the vacation/holidays as working days has rendered itself invalid, inoperative and ineffective in the eyes of law. It is further stated that the petitioner has unblemished record of service and he never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but of no avail and ultimately, the petitioner was compelled to raise industrial dispute challenging his verbal termination order and the conciliation meetings failed due to unreasoned attitude of the respondent. Against this back-ground, a prayer has been made that the direction be issued to the respondent to re-instate the petitioner in service with retrospective effect along-with all consequential benefits including back-wages.

3. The respondent contested the claim of the petitioner by filing reply wherein it has been asserted that the petitioner was engaged against the development activities on temporary basis by the respondent in the year, 2002 and he had not completed 240 days in twelve calendar months, hence, the question of termination or retrenchment does not arise and even no assurance was given for his re-engagement and no person had been engaged against any work. The petitioner was never appointed as beldar by the respondent but he was engaged on temporary basis against development activities and even the respondent had not engaged any person work, hence, the principle of "last come first go" is not applicable. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 7.12.2011.

1. Whether the termination of the services of petitioner by the Secretary Nagar Panchyat Sunni w.e.f. 1.6.2008 is in violation of the provisions of the Industrial Disputes Act? ...*OPP*

2. If issue no.1 is proved to what relief and service benefits the petitioner is entitled? ...*OPP*

3. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no.1.

7. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had completed 240 days in each calendar year, his termination without issuance of any notice and without payment of compensation is against the provisions of the Act. He also contended that the persons junior to the petitioner have been retained and fresh hands have been engaged in violation of the provisions of section 25-G & 25-H of the Act.

8. On the other hand, learned counsel for the respondent contended that the services of the petitioner had been engaged against the development activities on temporary basis subject to availability of work and funds, hence, the question of terminating his services does not arise. He further contended that the petitioner had not completed 240 days in any calendar year and no junior to him had been retained and no fresh hands have been engaged by the respondent.

9. To prove his case, the petitioner examined two PWs. He himself appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition including that in the year, 2001, he had joined in the office of Tehsildar Sunni-cum Secretary Nagar Panchyat as beldar and continued as such till 31.5.2008 and also completed 240 days in each calendar year and that he used to work as per muster roll issued by the Secretary Nagar Panchyat and after putting his attendance he used to work with other beldars and in the year 2008, he had been thrown out of the service by the respondent without prior intimation and notice. That thereafter his services were outsourced with the contractor and he continued in the same office with the Secretary Nagar Panchyat till 2013-14 and the payment was used to be made by the contractor and he used to work as per the availability of work. In cross-examination, he expressed his ignorance that he was engaged for a period of 29 days in September, 2002 and thereafter for 29 days in October, 2002 against muster roll no. 75 and 77 for the construction of pavement on Nagar Panchyat footpath in Shalu area in Ward no.1 on temporary basis. He admitted that he had worked for 82 days in the year, 2002. He denied that he had worked for 79 days in the year, 2003, 154 days in the year, 2005, 134 days in the year, 2006, 158 days in the year, 2007 and 78 days in the year 2008. He denied that he had not worked continuously and that his services had been engaged on temporary basis. He further denied that he was not engaged as beldar and that no junior to him was retained by the respondent.

10. PW-2 Shri Himesh Kumar, Junior Assistant office of Nagar Panchyat Sunni stated that as per record the detail of working days of the petitioner is Ex. PW-2/A and the same is prepared by him on the basis of record. In cross-examination, he admitted that the petitioner had not completed 240 days in any calendar year. He also admitted that the petitioner was engaged for specific work when it was available.

11. On the other hand, the respondent examined RW-1 Shri Sant Ram, Tehsildar Sunni, who stated that he was holding the additional charge of Secretary Nagar Panchyat Sunni and the petitioner had worked against development activities intermittently as and when the work was available. No junior to the petitioner was retained by the respondent and the petitioner had not completed 240 days in any calendar year and he had worked as per the mandays chart Ex. PW-2/A. In cross-examination, he admitted that no notice was issued to the petitioner prior to his termination. He denied that the petitioner had been working with the respondent continuously for the last ten years.

12. After the closer scrutiny of the record of the case, it has become clear that the service of the petitioner had been engaged by the respondent w.e.f. September, 2002 as is evident from the mandays chart Ex. PW-2/A. No doubt, the petitioner has claimed that he was engaged by the respondent as daily paid worker in the year, 2001 but he has failed to lead any documentary evidence in support of his such assertion which could go to show that his services had been engaged in the year, 2001. As per mandays chart Ex. PW-2/A, it is abundantly clear that the petitioner had worked for 58 days in the year, 2002, 79 days in the year, 2003, 82 days in the year 2004, 154 days in the year 2005, 134 days in the year, 2006, 158 days in the year 2007 and 78 days in the year 2008. Therefore, from the perusal of mandays chart Ex. PW-2/A, it is clear that the petitioner had worked with the respondent till May, 2008 and he had failed to complete 240 days in any calendar year and in twelve calendar months preceding his termination. There is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under :

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgments produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

13. From the perusal of mandays chart, Ex. PW-2/A, it is abundantly clear that the petitioner had not completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and engaged fresh hands, who are still working with the respondent as such the respondent had violated the provisions of section 25-G & 25-H of the Act. However, no cogent and satisfactory evidence has been led by him to prove that the persons junior to him have been retained and fresh hands have been engaged by the respondent. Therefore in the absence of any cogent and satisfactory evidence on record, it cannot be said that the respondent had retained juniors to the petitioner and engaged fresh hands as such the case of the petitioner does not fall under section 25-G and 25-H of the Act. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

15. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Relief.

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 8th day of December, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 32 of 2010.

Instituted on. 12.4.2010.

Decided on 8.12.2016.

Ramesh Kumar S/o Shri Sadhu Ram R/o Village Patukhar, P.O Reog, District Shimla, HP.
...Petitioner.

Vs.

The Secretary Nagar Panchyat Sunni, District Shimla, HP. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri B.R Kashyap, Advocate.

For respondent **:** Ms. Rani Thakur, Advocate vice Shri Ajay Chandel, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication :

"Whether termination of the services of Shri Ramesh Kumar S/o Shri Lekh Ram by The Secretary Nagar Panchyat Sunni, Tehsil Sunni, District Shimla, HP w.e.f. 1.6.2008 without following the provisions of the Industrial Disputes Act, 1947 and retaining junior workmen and engaging fresher's as alleged by the workman is proper and justified? If not, what relief of service benefits and compensation the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that initially he was appointed as daily wager beldar in the month of July, 2002 and worked continuously to the utmost satisfaction of his superiors till 31.5.2008 but his services were orally terminated w.e.f. 1.6.2008 without assigning any reason and that while terminating the services of the petitioner, he was given assurance that on the availability of work and funds, he would be re-engaged. He had completed 240 days in twelve calendar months preceding his termination but the mandatory provisions of section 25-F had not been complied with and the action of the respondent in not counting the vacation/holidays as working days has rendered itself invalid, inoperative and ineffective in the eyes of law. It is further stated that the petitioner has unblemished record of service and he never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but of no avail and ultimately, the petitioner was compelled to raise industrial dispute challenging his verbal termination order and the conciliation meetings failed due to unreasoned attitude of the respondent. Against this back-ground, a prayer has been made that the direction be issued to the respondent to re-instate the petitioner in service with retrospective effect along-with all consequential benefits including back-wages.

3. The respondent contested the claim of the petitioner by filing reply wherein it has been asserted that the petitioner was engaged against the development activities on temporary basis by the respondent in the year, 2002 and he had not completed 240 days in twelve calendar months, hence, the question of termination or retrenchment does not arise and even no assurance was given for his re-engagement and no person had been engaged against any work. The petitioner was never appointed as beldar by the respondent but he was engaged on temporary basis against development activities and even the respondent had not engaged any person work, hence, the principle of "last come first go" is not applicable. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 7.12.2011.

1. Whether the termination of the services of Shri Ramesh Kumar by the Secretary Nagar Panchyat Sunni *w.e.f.* 1.6.2008 is in violation of the provisions of the Industrial Disputes Act? ...*OPP*

2. If issue no.1 is proved to what relief and service benefits the petitioner is entitled? ...*OPP*

3. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no.1.

7. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had completed 240 days in each calendar year, his termination without issuance of any notice and without payment of compensation is against the provisions of the Act. He also contended that the persons junior to the petitioner have been retained and fresh hands have been engaged in violation of the provisions of section 25-G & 25-H of the Act.

8. On the other hand, learned counsel for the respondent contended that the services of the petitioner had been engaged against the development activities on temporary basis subject to availability of work and funds, hence, the question of terminating his services does not arise. He further contended that the petitioner had not completed 240 days in any calendar year and no junior to him had been retained and no fresh hands have been engaged by the respondent.

9. To prove his case, the petitioner examined two PWs. He himself appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition including that in the year, 2002, he had joined in the office of Tehsildar Sunni-cum Secretary Nagar Panchyat as beldar and continued as such till 31.5.2008 and also completed 240 days in each calendar year and that he used to work as per muster roll issued by the Secretary Nagar Panchyat and after putting his attendance he used to work with other beldars and in the year 2008, he had been thrown out of the service by the respondent without prior intimation and notice. That thereafter his services were outsourced with the contractor and he continued in the same office with the Secretary Nagar Panchyat till 2013-14 and the payment was used to be made by the contractor. In cross-examination, he expressed his ignorance that he was engaged for a period of 29 days in September, 2002 and thereafter for 29 days in October, 2002 against muster roll no. 75 and 77 for the construction of pavement on Nagar Panchyat footpath in Shalu area in Ward no.1 on temporary basis. He admitted that he had worked for 82 days in the year, 2002. He denied that he had worked for 79 days in the year, 2003, 154 days in the year, 2005, 134 days in the year, 2006, 158 days in the year, 2007 and 78 days in the year 2008. He denied that he had not worked continuously and that his services had been engaged on temporary basis. He further denied that he was not engaged as beldar and that no junior to him was retained by the respondent.

10. PW-2 Shri Himesh Kumar, Junior Assistant office of Nagar Panchyat Sunni stated that as per record the detail of working days of the petitioner is Ex. PW-2/A and the same is prepared by him on the basis of record. In cross-examination, he admitted that the petitioner had not completed 240 days in any calendar year. He also admitted that the petitioner was engaged for specific work when it was available.

11. On the other hand, the respondent examined RW-1 Shri Sant Ram, Tehsildar Sunni, who stated that he was holding the additional charge of Secretary Nagar Panchyat Sunni and the petitioner had worked against development activities intermittently as and when the work was available. No junior to the petitioner was retained by the respondent and the petitioner had not completed 240 days in any calendar year and he had worked as per the mandays chart Ex. PW-2/A. In cross-examination, he admitted that no notice was issued to the petitioner prior to his termination. He denied that the petitioner had been working with the respondent continuously for the last ten years.

12. After the closer scrutiny of the record of the case, it has become clear that the service of the petitioner had been engaged by the respondent in the year, 2002. As per mandays chart Ex. PW-2/A, it is abundantly clear that the petitioner had worked with the respondent till May, 2008 and he had failed to complete 240 days in twelve calendar months preceding his termination. There is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under :

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgments produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

13. From the perusal of mandays chart, Ex. PW-2/A, it is abundantly clear that the petitioner had not completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and engaged fresh hands, who are still working with the respondent as such the respondent had violated the provisions of section 25-G & 25-H of the Act. However, no cogent and satisfactory evidence has been led by him to prove that the persons junior to him have been retained and fresh hands have been engaged by the respondent. Therefore in the absence of any cogent and satisfactory evidence on record, it cannot be said that the respondent had retained juniors to the petitioner and engaged fresh hands as such the case of the petitioner does not fall under section 25-G and 25-H of the Act. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2

15. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Relief.

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 8th day of December, 2016.

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 37 of 2014.

Instituted on. 15.6.2014.

Decided on 12.12.2016.

Dhanbir Singh S/o Shri Jyoti Ram R/o Village Fatehpur, Tehsil Paonta Sahib, District Sirmour, HP. *...Petitioner.*

Vs.

M/s Gulshan Polypols Ltd., Dhaulakaun, Tehsil Paonta Sahib, District Sirmour, HP through its Managing Director/Employer. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Virender Pal, Advocate.

For respondent **:** Shri D.C Khanduja, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Dhanbir Singh S/o Shri Jyoti Ram R/o Village Fatehpur, Tehsil Paonta Sahib District Sirmour, HP w.e.f. 23.11.2012 by the Managing Director/Employer, M/s Gulshan Polypols Ltd., Dhaulakaun, Tehsil Paonta Sahib, District Sirmour, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In nutshell the case of the petitioner is that initially he was engaged as an operator by the respondent company in production department and worked as such w.e.f. 16.5.2009 till 22.11.2012 and thereafter by leveling frivolous allegation of stealing and without affording an opportunity of being heard, on 22.11.2012, his services were terminated without any prior notice and justification. That in spite of requests of the petitioner for his re-engagement, he was not re-engaged in service and on 18.5.2013 the Labour-cum-Conciliation Officer directed the respondent company to secure their presence for conciliation then the respondent company straightway refused to conciliate the matter in any manner. It is further stated that the respondent had failed to comply with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and also failed to comply with the sections 22 (2), 24, 25B and 25-F of the Act and that no EPF has ever been contributed by the respondent company of petitioner. Against this backdrop a prayer has been made that he be reinstated in service with back-wages, seniority including other allied benefits.

3. The respondent contested the claim of the petitioner by filing reply wherein it has been asserted that the case of the petitioner does not fall within the ambit of retrenchment as the petitioner was indulged in a case of theft and he admitted his lapse and a show cause notice was issued to him but no satisfactory reply was received from the petitioner and ultimately viewing such serious mis-conduct, his services were brought to an end. It is further asserted that since the petitioner admitted his fault, hence, no disciplinary proceedings as well as retrenchment compensation, was required and the management was competent to terminate his services and the provisions of the Act are not required to be complied with. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 23.12.2015.

1. Whether the termination of the services of the petitioner w.e.f. 23.11.2012 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP*

2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP*

3. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back wages.

Relief. Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

7. The learned counsel for the petitioner contended that the services of the petitioner have been terminated illegally by the respondent without following the provisions of the Act. He further contended that the petitioner never committed any theft and his services were terminated without serving any show cause notice, chargesheet and without holding any enquiry despite the fact that he had completed 240 days in every calendar year. He also contended that the termination of the petitioner in the aforesaid manner is in violation of the principles of natural justice which tantamounts to unfair labour practice, as such, the petitioner is entitled to be reinstated in service with all consequential service benefits including back-wages.

8. Conversely, the learned counsel for the respondent contended that the services of the petitioner were rightly terminated in view of the gross misconduct on his part and there is no violation of any mandatory provisions of the Act as the petitioner had admitted his guilt.

9. To prove this issue, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he had committed theft. He admitted that he received notice dated 23.11.2012 Ex. RX-1 from the respondent company regarding the theft. He denied that reply mark X was filed by him and that letters mark Y and mark Z-1 were written by him. He further denied that he had received his dues by way of demand draft dated 21.12.2013 amounting to ₹ 8091/-. He also denied that second show cause notice dated 23.2.2013 mark Z-2, another notice dated 3.4.2013 mark Z-3 and show cause notice dated 23.11.2013 mark Z-5 were issued to him. He denied that reply dated 18.4.2013 mark Z-4 was submitted by him. He also denied that his services had been terminated in accordance with law.

10. On the contrary, the respondent examined Shri Atul Rastogi, Factory Manager, as RW-1 who stated that the petitioner was working as an operator with the respondent w.e.f. May, 2009 and on account of theft, he was removed from service on 23.11.2012. He filed a letter of apology Ex. RW-1/A and thereafter a show cause notice Ex. RW-1/B was issued to him which was replied by him vide reply Ex. RW-1/C. Again a show cause notice Ex. RW-1/D was issued to him but he had not filed any reply to the same and ultimately he was terminated from service vide termination letter Ex. RW-1/E. In cross-examination, he denied that the petitioner had not committed any theft. He admitted that neither any chargesheet was issued nor any enquiry was conducted against the petitioner before terminating his services. He denied that show cause notices Ex. RW-1/B and Ex. RW-1/D are fabricated. He further denied that the petitioner had not tendered any apology.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent as operator from May, 2009 till 22.11.2012. It is also not in dispute that the petitioner was the permanent employee of the respondent prior to his termination. The case of the respondent is that his services have been rightly terminated in view of the grave/major misconduct of theft on his part as he admitted his

guilt by submitting written apology vide letter dated 23.11.2012 Ex. RW-1/A (mark X) and letter dated 1.12.2012 Ex. RW-1/C (mark Z-1). However, from the perusal of the record it has become clear that the petitioner has denied that the aforesaid letters/replies have been filed by him. When the aforesaid letters were put to him in cross-examination he specifically denied that the aforesaid letters were written/filed by him. From the perusal of both the aforesaid letters/replies, it is also clear that the handwriting as well as signatures in both the letters are different. Since, the petitioner has denied that the aforesaid letters were written by him, therefore, it was incumbent upon the respondent to have proved both the letters in accordance with law. However, except for the statement of RW-1, no other evidence has been led by the respondent to prove that the aforesaid letters were written by the petitioner. Hence, it cannot be said that the petitioner had admitted his guilt. It is an admitted fact that the services of the petitioner had been terminated vide termination letter Ex. RW-1/E without holding any domestic enquiry and without issuance of any chargesheet as admitted by the respondent. Now, the question which arises for consideration before this Court as to whether the action of the respondent was illegal and unjustified in terminating the services of the petitioner without holding the domestic enquiry and without following the principles of natural justice on the ground of the misconduct. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is a proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/ respondent. In the present case admittedly neither any chargesheet was issued to the petitioner nor any domestic enquiry was held before terminating him from service. In **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments-221**, the Hon'ble Apex Court has held as under :

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under :

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons :
>
> 9. ……..
>
> 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
>
> 11. ……..
>
> 12. …….
>
> 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked continuously with the respondent from May, 2009 till 23.11.2012 meaning thereby the petitioner had completed 240 days in each calendar year. Therefore, it was incumbent upon the respondent to have conducted the enquiry against the petitioner prior to his termination. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

12. Admittedly, the petitioner had completed more than 240 days in each calendar year, preceding his termination. Now, it stands proved on record that the services of the petitioner had been terminated without giving any opportunity of being heard to him. As per the termination letter Ex. RW-1/E, the petitioner was informed to collect his full & final dues on any working day within seven days. However, the petitioner has denied that the full & final dues were received by him. At this juncture, it would be relevant to re-produce section 25-F of the Act, which reads as under :

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. The provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has not complied with the conditions of section 25-F as enumerated in clause (a) to (c), precedent to the retrenchment of petitioner. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under :

"34. …….The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

14. In the present case also no evidence has been produced by the respondent to prove that the petitioner was given one month's notice in writing or he was paid wages for the period of the notice in lieu of such notice as per clause (a) of section 25-F of the Act. Moreover, it has also not been proved on record that the petitioner has been paid retrenchment compensation equivalent to the fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months as per clause (b) of section 25-F. Further, with regard to the provisions of clause (c) of the section 25-F, the respondent has failed to produce any evidence which could go to show that the notice was served in the prescribed manner on the appropriate government. Therefore, it has become clear that the respondent has not complied with the conditions (a) to (c) of the section 25-F, which are mandatory in nature as such the termination of the services of the petitioner by the respondent is illegal and unjustified.

15. Therefore, in view of my forgoing discussion, I have no hesitation in holding that the services of the petitioner have been terminated illegally without conducting of any enquiry and following the provisions of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue no.2.

16. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without complying with the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

19. In the present case no evidence has been led by the petitioner to prove that he was not gainfully employed. The petitioner has failed to discharge his burden by placing any concrete material on record and by leading any cogent and satisfactory evidence that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to

any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service forth-with with seniority and continuity. However, the petitioner is not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 12th day of December, 2016.

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 115 of 2010.

Instituted on 27.10.2010.

Decided on 7.12.2016.

Gabriel Employees Union, Parwanoo, District Solan, HP through its President/General Secretary. ...*Petitioner.*

Vs.

M/s Federal Mogul Bearing India Ltd., Sector-2, Parwanoo, District Solan, HP through its Factory Manager/Occupier. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate.

For respondent **:** Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication :

1. **"Whether the action of the management of M/s Federal Mogul Bearings India Ltd., Parwanoo District Solan, HP to withdraw the continuing benefits as per previous settlements as shown therein against points no. 2, 5,6,7,8,9 and 10 of the notice dated 4.4.2009 (copy enclosed) of Gabriel Employees Union Parwanoo is legal and justified? If not, to what benefits and relief the workmen of the factory are entitled to?"**

2. "Whether the action of the management of M/s Federal Mogul Bearings India Ltd. Parwanoo District Solan not to allow 55 senior workmen of the factory to work inside the factory w.e.f 1.11.2008 onwards as per Annexure A and to allow transferred workmen to work in place of them is legal and justified? If not, to what wages, incentive and relief the affected 55 workmen as per Annexure –A are entitled to?"

2. In nutshell, the case of the petitioner union is that the workers working with the respondent company has formed the union known as Gabriel Employees Union which is duly registered vide registration no. 258 and it has duly elected body and President Shri Dwarka Nath is duly authorized to file the claim petition on behalf of the workers union. It is further stated that the demands raised by the workers through its union vide demand notice dated 4.4.2009 are genuine. That the demand no.2 regarding providing of safety shoes to the ladies workmen is very genuine as the same used to be given for the last many years but the respondent company has not provided the same to the ladies which is totally illegal. That the company withdrew the bus facility of the workers without any reason. The company illegally started deducting all allowances i.e study allowance, convenience allowance, medical allowance, additional special allowance, shift allowance and also closed the facility of scooter loan, house loan and Diwali gifts. It is also stated that the company had also stopped deducting the subscriptions of the workers from their salary which used to be deducted by the company earlier and was being paid to the union. That as per the settlement and agreement arrived between the union and the company, the company used to pay the office rent of the union to the union which had been stopped by the company w.e.f. November, 2008 and as such the company is bound to pay the office rent of ₹ 2500/- per month to the workers union w.e.f. November, 2008 and that the soap and jaggery facilities given to the workers have been stopped by the company which caused great hardship to the workers and even the company has not provided the dress, shoes and sweater to all the suspended workers union leaders which is totally illegal. The company had withdrawn all the facilities mentioned in the demand notice just to harass the workers and to break the union. It is stated that the company allowed the workers inside the factory w.e.f. 1.11.2008 but despite allowing them inside the factory, 55 workers were not given work and were asked to sit in one room without any work and in place of them company employed new workers and some workers were transferred out side and as such the action of the respondent is illegal and for this reason the workers union filed a complaint against the company to the Hon'ble Chief Minister and Labour Commissioner Shimla and that all the 55 workers are entitled for all service benefits including monitory benefits for the period when they were not allowed to work. Against this back-drop a prayer has been made that the demands no. 2 and 5 to 10 raised by the worker union in demand notice dated 4.4.2009 be allowed and further the action of the company to ask the 55 workers to sit in one room without any work may be held illegal and the company be directed to pay all service benefits to all 55 workers including monitory benefits.

3. The respondent contested the claim by filing reply wherein preliminary objections had been raised qua maintainability, concealment of material facts and that the 73 workers of respondent company had entered into a settlement under section 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) on 1.12.2010. On merits, it has been asserted that the petitioner union is not the representatives of the work force of workers working in the respondent company as 73 workers have individually entered into a settlement with the respondent. It is further asserted that the female workers working with the respondent company have been provided with safety shoes and workers have been provided transportation facility. That the deduction of subscription of workers from their salary as union funds is not the job of company, hence, the respondent company had stopped the deduction of the subscription from the workers' wages and that the respondent company is not bound to pay office rent of ₹ 2500/- per month to the petitioner as on date the respondent does not recognize the petitioner union as the representative of its work force and as such the petitioner union should meet out its own liabilities. It is also asserted that the

respondent is regularly providing milk, gur in the canteen and soap is also provided for use in toilet, wash rooms and canteens. That the services of suspended workers were terminated after obtaining permission under section 33-1 of the Act from this Court, hence, the dismissed workers are not entitled for any benefits/facilities. That the demand notice is false as the gents toilets are properly maintained and are properly ventilated and proper canteen facility, rest rooms and uniforms have also been provided. It is asserted that the vide letter dated 16.2.2009, the petitioner union raised the same issue before the Hon'ble Chief Minister upon which Labour Commissioner issued show cause notice dated 31.3.2009 which was duly replied by the respondent and the letter raising the issue was dropped by the Labour Commissioner vide letter dated 24.4.2010. It is asserted that out of 73 workers some of the workers have taken full & final settlement under voluntary retirement scheme. It is denied that new workers were employed. That all the workers were paid the wages and the terms of reference as referred to in this reference stand duly adjudicated by the Hon'ble High Court vide order dated 18.12.2012 passed in CWP No. 4175 of 2012 and 4610 of 2012-A. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner union reaffirmed their allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 14.6.2013.

1. Whether the action of the management of M/s Federal Mogul Bearings India Ltd., Parwanoo to withdraw the continuing benefits as per previous settlements is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what benefits and reliefs, the workmen are entitled to? ...*OPP.*

3. Whether the action of the management of M/s Federal Mogul Bearings India Ltd., Parwanoo, not to allow 55 senior workmen of the factory to work inside the factory w.e.f. 1.11.2008 and to allow transferred workmen to work in their place is illegal and unjustified as alleged? ...*OPP.*

4. If issue no.3 is proved in affirmative to what wages, incentives and relief, the affected 55 workmen are entitled to? ...*OPP.*

5. Whether this petition is not legally maintainable? ...*OPR.*

26. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 Not pressed.

Issue no.4 Becomes redundant.

Issue no.5 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issue no.1.

8. To prove issue no.1, the petitioner union examined one Shri Dwarka Nath as PW-1, who stated that he has been authorized by the workers vide authority letter Ex. PW-1A to depose in this case and he is the President of the workers union. The union has raised a demand notice Ex. PW-1/B to the respondent company and Ex. PW-1/C is the list of 55 workers, who have been asked to sit inside the factory. The workers as per list Ex. PW-1/C were not allowed to work and in their place the transferred workers from outside were given the work. The demands raised in the demand notice Ex. PW-1/D are genuine. That Ex. PW-1/E is the copy of settlement as per which the company had agreed to provide the office rent and other facilities to workers. Ex. PW-1/F is the another copy of memorandum of settlement as per which the office rent was fixed at ₹ 2500/- which was used to be deposited by the company in our Account which is clear from the copy of pass book Ex. PW-1/G. The company had not deposited the office rent from November, 2008 till date. The company had not provided the shoes to the ladies and dress allowance in the year 2008 and 2009. Ex. PW-1/H is the complaint filed against the respondent company and Ex. PW-1/J is the notice issued by the Labour Officer. Ex. PW-1/K and Ex. PW-1/L are the complaints filed before the Labour Commissioner by the union. In cross-examination, he expressed his ignorance that 73 workers have individually entered into a settlement with the company on 1.12.2010. He admitted that his services were terminated by the company however he denied that as per their constitution, a terminated worker cannot be elected as President. He also denied that 73 workers have settled all their court cases. He admitted that Ex. P-X had been signed only by 30 workers. He denied that 73 workers are not the members of their union. He further denied that safety shoes have been provided by the company and the facility of transport had not been withdrawn. He denied that the company is accepting the demands raised in the demand notice. He also denied that when the 55 workers were not given the work at that time recession period was going on. He denied that no new workers were engaged. He also denied that out of 55-60 workers, 33 workers had taken VRS, 8 workers have been suspended and enquiry was being conducted against them, 2 workers were terminated and 13 workers were given the work. He denied that the union is not entitled to receive ₹ 2500/- per month as office rent from the management. He denied that all the demands have been accepted and have been settled by the order of the Hon'ble High Court.

9. On the other hand, the respondent has examined one Shri Balwinder Singh, Manager (HR), who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averment as stated in reply. In cross-examination, he admitted that there is a workers union in their factory and the union has its duly elected representatives and that the union had raised demand notice Ex. PW-1/B. He denied that the company had not provided the uniform to its female employees for the year, 2008 and 2009. He admitted that there is a rest room for the female workers but denied that the same was got demolished and was reduced in size later on. He further denied that the toilet attached with the rest room of the female employees was demolished. He admitted that bus service for the male and female workers were stopped w.e.f. 1.11.2008 but explained that the bus service was resumed either in the year, 2009 or starting of the year, 2010. He admitted that the allowances mentioned in serial no.6 of Ex. PW-1/B, had been stopped by the company. He admitted that subscription fees of the union was used to be deducted by the company from the wages of the workers but explained that the same was stopped due to the request of the workers. He admitted that the company used to pay ₹ 2500/- per month to the workers union for its office

which was stopped w.e.f. December, 2008 till date. He denied that the company is liable to pay the rent for the office of workers union w.e.f. December, 2008 till date. He admitted that the soap and jiggery which was being provided to the workers was stopped during the strike period but explained that thereafter the same is being given. He denied that the workers never went on strike but there was lock-out. He admitted that arrears for the period w.e.f. July, 2008 till 31.10.2008 were paid to the workers as per the Hon'ble high Court order. He admitted that some of the executive members of the workers union were suspended in the year, 2008 and they were not being provided the shoes and pull overs till 31.3.2012. He admitted that all the demands raised in demand notice Ex. PW-1/B are genuine demands but explained that the demands were stopped due to the illegal strike by the workers and due to breach of long term settlement dated 2.6.2007 and subsequently the benefits were released.

10. After the closer scrutiny of the record of the case, it is clear that the petitioner union had raised a demand notice Ex. PW-1/B and vide reference received from the appropriate government, the demands as per points no. 2 and 5 to 10 of the demand notice Ex. PW-1/B are referred for adjudication which are as under :

2. The female workers have not been provided safety shoes for the years 2007, 2008 and 2009.

5. The bus facility for the workers is not being provided by the management.

6. That the facilities of study allowance, conveyance allowance, medical allowance, additional special allowance, shift allowance, scooter loan, house loan and Diwali gifts have been stopped by the management.

7. That the management has also stopped deducting subscription fee from the salary of the workers towards the funds of the union.

8. The payment of office rent of the union has also been stopped.

9. The facility of providing jaggery and soap to all the workers has also been stopped.

10. The suspended office bearers of the union have not been provided with the uniform, shoes, sweaters etc.

11. So, far as the demand no.2 is concerned, RW-1 denied in crossexamination that the company had not provided uniforms to their female workers for the year, 2008-09. In the reply it has been submitted by the respondent that the female workers have been provided with safety shoes. So far as the demand no.5 relating to the bus facility to the workers is concerned, the stand of the respondent is that the bus facility was never withdrawn at any point of time. However, RW-1 admitted in cross-examination that the bus service was stopped w.e.f. 1.11.2008 and now the same has been resumed either in the end of the year 2009 or in the starting of the year 2010. Hence, no orders are required to be passed with respect to demands no. 2 & 5.

12. Demand no.6 pertains to the fact that the management had stopped the facilities of study allowance, conveyance allowance, medical allowance, additional special allowance, shift allowance, scooter loan, house loan and Diwali gifts. RW-1 admitted in crossexamination that the company had stopped the allowances mentioned in serial no.6 of the Ex. PW-1/B due to the breach of long-term settlement dated 2.6.2007. He denied the suggestion that the breach of settlement was not on the part of the union rather the same was on the part of the company. He admitted that the

plea of breach of settlement dated 2.6.2007 on the part of the workers was taken in reference no. 58 of 2008. In the order dated 18.12.2012 Ex. RX-1 passed in CWP No. 4175 of 2012 and CWP No. 4610 of 2012-A, the Hon'ble High Court has issued the following mandatory directions :

a) A lump sum compensation of Rs.2.6 lacs shall be paid to every workman covered as per the Award dated 31.3.2012, as full and final settlement of his claim of wages and incentives upto 31.12.2012.

b) A sum of Rs.7672/- shall also be added to their (workmen) present gross wages on 1.1.2013 as given to the other workmen.

c) The workmen shall also be entitled to annual increase w.e.f. 1.1.2013 and they shall also be paid other incentives/benefits at par with other workmen.

d) The workmen shall also maintain the productivity as per the standard time.

e) The workmen are directed not to file any complaint, demand charter, demand notice, claim petition regarding wages, incentives etc., which have arisen out of Reference No. 58/2008.

RW-1 admitted that the company had implemented the aforesaid order passed by the Hon'ble High Court and had given all the benefits to the workers. Therefore, in view of the aforesaid order passed by the Hon'ble High Court, no further order is required to be passed with respect to demand no.6.

13. Demand no.7 pertains to the fact that the respondent company had stopped deducting the subscription fee from the salary of the workers towards the funds of the union. RW-1 admitted in cross-examination that the same was being deducted prior to strike and later on it was stopped due to the request of the workers. As per section 7 (2) (kkk) of the Payment of Wages Act, the deduction for the payment of contribution to any fund constituted by Trade Union can only be made with the written authorization of the employed person. The petitioner has failed to place on record any cogent and satisfactory evidence which could go to show that the workers had given the written authorization to the management for deducting the subscription fee from their salary towards the union funds. Therefore, in the absence of any written authorization of the workers in this respect, no direction can be issued to the respondent with respect to the aforesaid demand no.7.

14. Demand no.8 is about the stoppage of payment of office rent to the workers union. The learned counsel for the respondent submitted that the respondent is not bound to pay ₹ 2500/- per month to the workers union for its office as it does not recognize the Gabriel Employees Union as the representative of its work force as 73 workers had individually entered into a settlement and in terms of clauses 13 & 14 of settlement dated 1.12.2010 mark X, they had settled all their disputes in respect of references no. 45 of 2008 and 58 of 2008 and also undertaken that they have no concern with any demand charter of demands raised by Gabriel Employees Union. It may be pertinent to mention here that as per clause 15 of memorandum of understanding dated 31.5.2007 Ex. PW-1/F, the management had agreed to revise the union office rent to ₹ 2500/- per month w.e.f. 1st June 2007. However, thereafter, a long term settlement dated 2.6.2007 Ex. RX-3 was arrived at between the workers union and the management wherein nothing had been mentioned regarding the payment of office rent to the workers union. PW-1 admitted in cross-examination the execution of the settlement dated 2.6.2007. RW-1 admitted in cross-examination that the company used to pay ₹ 2500/- per month to the workers union for its office which was stopped w.e.f. December, 2008 till date because the same was not a part of settlement dated 2.6.2007. The perusal of settlement dated 2.6.2007 Ex. RX-3 shows that it was to remain effective from 1st October, 2005 to 28.2.2010. Clause-3 of the aforesaid settlement reads as under :

"3. **Duration of the settlement**.

This settlement will be effective from October 1, 2005 …… except in cases where it is otherwise specified, and shall remain binding up to Feb., 28,2010. This settlement shall remain valid and binding on the parties even beyond Feb., 28, 2010 till a new settlement is arrived at."

From the evidence on record, it is clear that on 1.12.2010, 73 workers had individually entered into a settlement mark X and in terms of clauses 13 & 14 thereof, they had settled all their disputes with respect to reference no. 45 of 2008 and 58 of 2008 and also undertaken that they had no concern with any demand notice and demand charter raised by Gabriel Employees Union and all their dues shall stand settled. Since, the payment of the office rent was not a part of settlement dated 2.6.2007 which was to remain effective from 1st October, 2005 and also in view of the individual settlements arrived at by 73 workers, the petitioner union is not entitled for any office rent from the respondent management.

15. Demand no.9 is regarding the stoppage of providing the facility of jaggery and soap to the workers. RW-1 admitted in cross-examination that the facility of soap and jaggery which was being provided to the workers was stopped during the strike period and thereafter the same is being given. He denied that the soap and jaggery is not being provided to the workers as on date. No evidence has been led by the petitioner to prove that the soap and jagery is not being provided to the workers as on date. Since, it has been specifically deposed by RW-1 in cross-examination that the facility of soap and jaggery is being provided to the workers, therefore, no direction can be issued to the respondent with respect to demand no.9.

16. Demand no. 10 pertains to the providing of uniform, shoes to the office bearers of the workers union who were suspended. RW-1 admitted in cross-examination that the suspended workers were not being provided shoes and pull overs till 31.3.2012 because they were dismissed after obtaining the permission from the Labour Court. However, during the course of arguments, it has been submitted by the learned counsel for the petitioner that he does not want to press this demand because the suspended workers have now been dismissed and they have raised this issue in the separate demand notice which is pending adjudication before this Court.

17. Therefore, keeping in view the entire evidence on record, and also in view of my foregoing discussion, I have no hesitation in holding that the action of the respondent management to withdraw the continuing benefits as per previous settlements is not illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no.2.

18. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3

19. During the course of arguments, the learned counsel for the petitioner had not pressed this issue, therefore, this issue is decided in favour of the respondent and against the petitioner.

Issue no.4.

20. Since, the learned counsel for the petitioner had not pressed issue no.3, above, this issue becomes redundant.

Issue no.5.

21. In support of this issue, no evidence was led by the respondent to show that as to how this petition is not maintainable. Moreover, the petition has been filed by the petitioner pursuant to the reference made by the appropriate government to this Court and I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.5 is decided in favour of petitioner and against the respondent.

Relief.

As a sequel to my findings on issues no. 1 to 5, the claim of the petitioner union fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 7th day of December, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 54 of 2015.

Instituted on. 31.7.2015.

Decided on 30.12.2016.

Pradeep Kumar S/o Shri Jawahar Lal R/o Village Kua, P.O Lagoti, Tehsil Anni District Kullu, HP. *...Petitioner.*

Vs.

1. The State of H.P through Secretary HPPWD, H.P Secretariat Shimla.
2. The Executive Engineer, HPPWD Kalpa Division, Tehsil Kalpa District Kinnaur HP.

...Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Sanjeev Sharma, Advocate.

For respondents **:** Ms. Reena Chauhan, Dy. DA.

AWARD

The following reference has been sent by the appropriate government for adjudication :

"Whether termination of the services of Pradeep Kumar S/o Shri Jawahar Lal R/o Village Kua, P.O Lagoti, Tehsil Anni District Kullu, HP by the Executive Engineer, HPPWD Division Kalpa, Tehsil Kaza, District Kinnaur, HP **during June, 1999 without following**

the provisions of the Industrial Disputes Act, 1947 as alleged by the worker is legal and justified? If not, keeping in view the delay of more than 12 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially he was engaged as chowkidar on daily wages basis in the month of July, 1996 in HPPWD Sub Division Reckong Peo under Division Kalpa and worked as such till 30.7.2000 to the entire satisfaction of his superiors and there was no complaint whatsoever with regard to the performance of the petitioner and as per the policy of State Government, a daily wager is required to complete 180 days in tribal area in each calendar year but the petitioner had worked for 240 days in each calendar year. It is further stated that on 30.7.2000, the petitioner was orally told by respondent no.2 that his services are no longer required and he need not to come from 1.8.2000 and his services were terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further also stated that the petitioner after his termination made many representations to the respondents against his illegal termination and prayed for his reinstatement but instead of reengaging the petitioner in service, the respondents have retained junior persons namely Lalit Kumar, Lata Devi, Bhuvneshwar Singh and Kesri Lal and the procedure of last come first go was not followed and thereafter a demand notice dated 3.11.2011 was served upon the respondents and that the conciliation proceedings were held but the Labour Commissioner declined to make the reference, hence, the petitioner had filed a Civil Writ Petition before the Hon'ble High Court in which the Labour Commissioner was directed to make the reference to this Court. It is also stated that the petitioner had completed 240 days in each calendar year and the action of respondents in terminating the services of the petitioner is illegal, arbitrary and against the mandatory provisions of section 25-G, 25-F and 25-H of the Act and even while engaging fresh incumbents, the employer had thrown all the canons of law as well as the mandatory provisions of the Act. Against this back-ground, a prayer has been made that the direction be issued to the respondent to re-instate the petitioner in service with retrospective effect along-with all consequential benefits including back-wages. It is also prayed that the employer be further directed to grant the regular status to the petitioner as his junior incumbents have already been regularized.

3. The respondents contested the claim of the petitioner by filing reply wherein preliminary objections have been taken qua maintainability being time barred and no fundamental rights of the petitioner have been infringed in any manner. On merits, it has been asserted that the petitioner had worked on daily wage basis w.e.f. July, 1996 to June, 1999 under Sub Division Reckong Peo. It is denied that the petitioner had worked till 31.7.2000. It is admitted that that a daily wager is required to complete 180 days in Tribal Area in each calendar year. It is asserted that during his employment with the department, no fictional breaks were given to the petitioner and the work with the department was occasional work which was executed only after the allocations of funds. The petitioner himself remained absent and abandoned his job. That the petitioner never made any representation to the department and the representations were written in common handwriting and as far as the retention of workers namely Lalit Kumar, Lata Devi, Bhuvneshwar Singh and Kishori Lal are concerned, they have been retained as they have been working continuously with the department and the petitioner had left at his own, hence, the procedure/principles of "last come first go" is not applicable in this case. It is also asserted that neither the petitioner worked with the department upto 30.7.2000, nor his services were terminated, hence, serving the notice to call him to join his duties under the provisions of the Act, was not required in the facts and circumstances of this case as he himself was not willing to resume his duties. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 15.3.2016.

1. Whether the termination of the services of petitioner during the year 1999 by the respondents without complying with the provisions of the Industrial Disputes Act 1947 is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the petition is time barred as alleged? ...*OPR.*

4. Whether the petition is not maintainable as alleged? ...*OPR.*

5. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity from the date when the petitioner raised demand notice but without back-wages.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the petitioner and against the respondents per operative part of award.

Reasons for findings

Issues no.1 &3.

7. Being interlinked and co-related, both these issues are taken up and discussed together for decision.

8. The Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor he was paid retrenchment compensation and since the petitioner had completed 240 days in each calendar year, his termination without issuance of any notice and without payment of compensation is against the provisions of the Act. He also contended that the persons junior to the petitioner have been retained and fresh hands have been engaged in violation of the provisions of section 25-G & 25-H of the Act.

9. On the other hand, learned Dy. DA for the respondents contended that the services of the petitioner were never terminated by the respondents, who himself abandoned his job without any intimation to the respondents.

10. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as chowkidar on daily wages basis at Reckong Peo in July 1996 with the

respondent and worked as such till 30.7.2000 and his services were orally terminated on 31.7.2000 without issuing any notice and paying compensation. Reckong Peo is a tribal area. He had made representations Ex. PW-1/A to PW-1/D, to the SDO Reckong Peo and thereafter he raised demand notice in the year, 2011 and Ex. PW-1/E is the reply filed by the respondent to the demand notice and mark Y is the copy of order passed by the Hon'ble High Court on 23.4.2015. He had worked for more than 240 days in preceding twelve months before his termination. His juniors namely Lalit Kumar, Lata Devi, Bhuvneshwar Singh and Kesari Lal are still working with the department and he is unemployed after his termination. He be reinstated in service with all consequential benefits. In cross-examination, he denied that he had worked as beldar and he had worked from the year, 1996 to 1998. He further denied that the appointment of daily wager is made only within the District and that he had not made any representation to the department after his termination. He admitted that no documents regarding the receipt of the representations Ex. PW-1/A to Ex. PW-1/D have been placed by him. He denied that all the representations are in one hand and have been written in one day. He denied that Lalit Kumar, Lata Devi, Bhuvneshwar Singh and Kesari Lal had worked continuously with the department and they were not his juniors. He also denied that the work season in Kinnaur District is only for 5-6 months being a snow bounded area and that he used to leave the work at his own without intimation to the department.

11. On the other hand, the respondents examined RW-1 Shri Rahul Thakur, Assistant Engineer, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B and the copy of mandays chart of the petitioner Ex. RW-1/C. In crossexamination, he admitted that no notice was issued to the petitioner for resumption of his duties and that S/shri Lalit Kumar, Lata Devi, Bhuvneshwar Singh and Kesari Lal were the juniors of the petitioner and they have been regularized. He denied that the petitioner had worked till 31.7.2000 but his presence was marked only till 26.7.1999. He admitted that the petitioner had completed 180 dyas in each calendar year w.e.f. 1996 to 1999. He further admitted that neither any notice was issued nor any compensation was paid to the petitioner. He denied that the services of the petitioner were terminated orally.

12. After the closer scrutiny of the record of the case, it has become clear that the services of the petitioner have been engaged as daily waged labourer by the respondents and he worked as such w.e.f. July, 1996 till June, 1999 as is evident from the mandays chart Ex. RW-1/C. The first question which arises for consideration before this Court is as to whether the petition is time barred. As per mandays chart, Ex. RW-1/C, it is clear that the petitioner had worked with the respondents till June 1999 and he raised the industrial dispute before Labourcum-Conciliation Officer, Shimla in the year 2011 after a gap of about 12 years. The law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in ***Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another (1999) 6 SCC 82,*** *as under:—*

> ***"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

It has also been held by the Hon'ble Supreme Court in **Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496** that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the

appellant of his back wages for the period of delay in raising the termination issue. In a latest judgment, the **Hon'ble Supreme Court in 2014, 10 SCC 301 titled as Raghubir Singh Vs. General Manager, Haryana Roadways Hissar** has held that Limitation Act has no application to reference made by the appropriate government to Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. The relevant portion of the aforesaid judgment is reproduced as under:

> "16 **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka it was held by this Court as follows :**
>
> **"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis supplied).**

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

13. In the back-ground of the aforesaid legal position, in the instant case, the services of the petitioner were terminated in June, 1999 and he raised the demand notice on 3.11.2011 but the Labour Commissioner had refused to make the reference on the ground of delay and latches. Thereafter, the petitioner filed writ petition i.e CWP No. 2163 of 2015-G before the Hon'ble High Court of HP wherein the Hon'ble High Court vide its order dated 23.4.2015 directed the Labour Commissioner to make the reference and the present reference was sent to this Court. Moreover, it is not the case of the respondents that due to the delay in raising the industrial dispute, there is any loss or unavailability of material evidence. Hence, it cannot be said that delay in raising the industrial dispute is fatal to the reference and as such the petitioner cannot be debarred from claiming the relief from his employer and mere delay in challenging the termination would not be a bar to the adjudication of the present dispute which has been referred to this Court by the appropriate government.

14. The next contention raised on behalf of the petitioner to this effect that he had worked for 240 days in each calendar year preceding his termination but no notice as contemplated under section 25-F of the Act has been issued to the petitioner before terminating his services. As per mandays chart Ex. RW-1/C, the petitioner had worked for 169 days in the year, 1996, 177 days in the year, 1997, 294 days in 1998 and 165 days in the year 1999 (till June, 1999) and no notice under section 25-F was served upon him before terminating his services. It is not in dispute that a daily wager is required to complete 180 days in Tribal Area in each calendar year instead of 240 days. Since, the petitioner had completed more than 180 working days (as required in Tribal area) in twelve calendar months preceding his termination hence, before terminating his services, it was incumbent upon the respondents to have complied with the provisions of section 25-F of the Act.

Moreover, the provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under :

> "34. …….The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant- Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

In the present case also the respondents had not complied with the conditions precedent to the retrenchment as per section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner by the respondents without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". It has been admitted by RW-1 Shri Rahul Thakur in cross-examination that S/Shri Lalit Kumar, Lata Devi, Bhuvneshwar Singh and Kesari Lal were the juniors to the petitioner and they have been regularized. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondents department while terminating him which is clear cut violation of the provisions of section 25-G of the Act. **In 2007 LLR 72, State of Haryana Vs. Dilbagh Singh,** it has been held by the Hon'ble Apex Court that where persons junior to a workman were, still working with management, termination of services of workman being in violation of sections 25-G and 25-H of the Industrial Disputes Act providing for procedure for retrenchment and re-employment of retrenched workers will not be valid and legal.

16. In the present case also, the petitioner has duly proved that after the termination of his services, juniors have been engaged/retained by the respondent and no notice was given to the petitioner by the respondents at any point of time calling upon him for his reemployment as such the termination of services of the petitioner by the respondents in violation of the provisions of sections 25-G of the Act is improper and unjustified.

17. The learned ADA for the respondent next contended that the petitioner had left the job at his own without any intimation to the respondents department. However, there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner has been placed on record by the respondents. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it has been held that :

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

Hence, in view of the law laid down (supra), and also in the absence of any evidence on record, it cannot be said that the petitioner had left the job at his own.

18. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner during June, 1999, by the respondents without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondents.

Issue no.2.

19. Since I have held under issues no.1 & 3 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified. Now, it has to be seen as to what service benefits the petitioner is entitled to. Admittedly, the present dispute has been raised by the petitioner after a gap of 12 years, hence, keeping in view all the facts and circumstances of the case, the petitioner is held entitled to reinstatement in service with seniority and continuity with effect from the date when he raised the demand notice.

20. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

"16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

22. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Moreover, the petitioner had raised the present dispute after a gap of about 12 years, hence, the back-wages cannot be granted to him after such a long gap of 12 years. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue No.4.

23. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity with effect from the date when he raised the demand notice i.e w.e.f. 3.11.2011. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref.No. 58/2016 Shri Dharmender Kumar V/S The Executive Engineer HPPWD Division, No.III, Shimla-4,H.P.

29.12.2016.

Present : None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

Case called twice but neither the petitioner nor his counsel appeared before this Court. It is 10:45 AM. Be awaited.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present : None for petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

It is 12:30 PM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present : None for petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

It is 3:30 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition. The record reveals that after the receipt of reference notices were issued to the parties and on 22.8.2016, the petitioner appeared in person before this Court and the case was adjourned for 28.9.2016 for filing of claim on which date Shri AnujTomar, Advocate put in appearance on behalf of petitioner and prayed time to file the claim which was allowed and the case was adjourned for 17.10.2016 on which date learned vice counsel for petitioner prayed further time to file the claim and as such the case was adjourned to 28.11.2016 on which date the learned counsel also failed to file any claim petition, hence, in the interest of justice, one last opportunity was granted to the petitioner to file statement of claim for today i.e 29.12.2016 but none appeared for petitioner. Since, the petitioner has failed to appear and file any claim petition despite having been afforded various opportunities, I have left with no other alternative but to decide the reference on the basis of material whatsoever is available on file.In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim arising out of the referenceand to further adjourn the case would be a futile exercise.

The following reference has been received from appropriate government for adjudication :

"Whether alleged termination of services of Shri Dharmender Kumar S/o Shri Sant Ram, Near RTO FinlodgeChauraMaidan Shimla, HP 171004 during May, 2005 by the Executive Engineer, HPPWD Division no.3 Shimla HP, who had raised his industrial dispute after about 9 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From the aforesaid reference is the clear that the petitioner has alleged his termination during May, 2005to be illegal and unjustified but despite having been afforded several opportunities to file the statement of claim, he has failed to file the same. The aforesaid reference also makes it clear that the petitioner had raised the present dispute after about 9 years which seems that the petitioner is not serious about the present dispute. Therefore, in the absence of any material

on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during May, 2005. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
29.12.2016.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 26 of 2012.

Instituted on. 14.6.2012.

Decided on 31.12.2016.

Chet Ram S/o Shri Krishan Lal, R/o Village Kotla Chamrog, P.O Oachghat, Tehsil & District Solan, HO. Through Shri J.C Bhardwaj, President HP AITUC, H.Q Saproon, Solan, HP.
...Petitioner.

Vs.

1. M/s MN DAV Dental College and Hospital, Tatul, P.O Oachghat, Tehsil & District Solan, HP through its Principal.

2. M/s Punjab Security Services, B.O near M.C Office Rajgarh Road Solan, H P.
...Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 **:** Shri Arun Verma, Advocate.

For respondent no.2 : Ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication :

"Whether termination of the services of Shri Chet Ram S/o Shri Krishan Lal R/o Village Kotla Chamrog, P.O Oachghat, Tehsil & District Solan, HP by the (1) Manager M/s Punjab Security Services, B.O Near M.C Office Rajgarh Road Solan, District Solan, HP (contractor) (2) The Principal, MN DAV Dental Colelge & hospital Tatul, P.O Oachghat, Tehsil & District Solan, HP (Principal Employer) w.e.f. 1.6.2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of backwages, past service benefits, seniority and amount of compensation the above workman is entitled to from the above employer ?"

2. Briefly, the case of the petitioner is that initially he was appointed as Lab Assistant by respondent no.1 directly during the month of November, 2006 and remained as such till his illegal termination on 1.6.2010 and that respondent no.2 so called contractor was a stranger to the petitioner and the contractor had nothing to do with the petitioner at any time as he had neither employed the petitioner nor terminated his services and even the petitioner never served under the supervision and control of contractor whereas he was working under the direct control of Dr. Mansi Jain as she was the head of department in the college and the name of the petitioner was illegally and arbitrarily transferred to the roll of so called contractor, who never took any work from him. It is further stated that the Principal of the college has assured the petitioner that his name would be taken back to the roll of college but instead of appointing him on regular post, his services had been terminated on 1.6.2010 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and that too without complying the Employment Standing Orders Act, 1946 and Rules made thereunder, hence, his termination without any basis and justification especially when his junior Shri Pumesh Kumar was retained and taken in the service of the college and made regular by the Principal of the college. It is also stated that the services of the petitioner were continuous for the purpose of section 25-B of the Act and as such he could not be removed from the employment without compliance of the set procedure for retrenchment under the Act as his services had been terminated without any notice, retrenchment compensation and that too without the compliance of section 25-F of the Act. That no employer who proposes to effect any change in the condition of the service applicable to any workman in respect of any matter specified in the 4th schedule shall not effect any change without giving 21 days' notice to the workman in a prescribed manner and further change could be effected only in pursuance of the settlement or award but not in the arbitrary manner. That the petitioner during his service tenure in each year had completed more than 240 days and even his work and conduct was more than satisfactory in all respects as he was never served any explanation call, show cause notice, censure or warning and he was performing his duties with great zeal, honestly and sincerely and even neither any chargesheet was served upon him nor he was subjected to any domestic enquiry and the only cause behind the drastic illegal action of removal appears to be his demand notice for continuous direct employment with the respondent college and his opposition for showing his name on the rolls of contractor and further his demand for regularization in the college like his junior Shri Pumesh Mehta. That the petitioner is unemployed since the date of his termination, hence, he is entitled to full back-wages. It is further stated that the junior workman Shri Pumesh Mehta and others were retained in the employment of the college and even the fresher ones are being employed in violation of section 25-G and 25-H of the Act. Against this back-drop a prayer has been made that he be reinstated on the same post and work in the employment of respondent no.1 college with seniority, continuity along-with full back-wages.

3. Before, I proceed further, it is important to mention here that vide award dated 7.9.2013, this reference was decided ex-parte in favour of petitioner and against the respondents which was challenged by the respondents before the Hon'ble High Court by filing CWP No. 1838 of 2014 wherein vide order dated 3.12.2015, the award passed by this Court has been set aside by the Hon'ble High Court with the following observation :

> "7. In view of the aforesaid discussion, the writ petition is allowed and the award passed on 7.9.2013 by the learned Industrial Tribunal–cum-Labour Court, Shimla, Camp at Solan, in Reference No. 26 of 2012 titled Chet Ram vs. The Principal, M/s M.N. DAV Dental College and another, is ordered to be set-aside. The parties through their counsels are directed to appear before the learned Industrial Tribunal-cum-Labour Court, Shimla on 14.12.2015, who after permitting the petitioner to file his defence and lead evidence, shall pass the award as expeditiously."

After the receipt of aforesaid orders of Hon'ble High Court, notice were issued for the service of respondent no.2 but despite having been served through publication, none appeared for

respondent no.2, hence vide order dated 18.6.2016, the respondent no.2 was proceeded against ex-parte.

4. The respondent no.1. contested the claim of the petitioner by filing reply wherein preliminary objections have been taken qua maintainability, concealment of material and true facts and that the petitioner has no locus standi to file and maintain the present petition. On merits, it has been denied that initially the appointment of the petitioner was directly in the employment of respondent no.1 as Lab Assistant during November, 2006 and that he remained as such till his termination on 1.6.2010. It is further denied that the respondent no.2 was stranger to the petitioner and so called contractor had nothing to do with the petitioner at any point of time and that he never worked under the control and supervision of contractor. It is also denied that the petitioner was working under the direct control of Dr. Mansi Jain and that his termination is without basis, reason and justification especially when his junior Shri Pumesh Kumar Mehta was retained by the Principal of the college. It is asserted that at no point of time the petitioner was directly engaged by the respondent who was engaged through respondent no.2 under an agreement of Man Power Supply and initially in November, 2006, the services of the petitioner had been provided by M/s D.R Tiger Security services agency as clerk cum Attendant and thereafter he was engaged by M/s Vikas security Agency and his services were provided by the Vikas Security Agency for a period of one year and when the above agency did not perform its part of the contract sincerely and fairly as there was some dispute of disbursement of wages with its workers, resultantly the workers left him and joined M/s Jai Durga Security Agency who also provided man power. The respondent no.1 rescinded the contract/agreement of M/s Vikas Security Agency before completion of its term and also discontinued the services of the manpower provided by it under the agreement. It is further asserted that the replying respondent never paid any salary/wages to the petitioner directly and the payment was made to the contractor and it was the contractor who used to disburse the salary to its employees. Thereafter, the petitioner in the year, 2008 got himself engaged/employed with M/s Jai Durga Security Services vide agreement dated 1.3.2008 for supply of manpower and the said agency deputed the petitioner with respondent no.1 which was valid for one year i.e up to 31.3.2009 and thereafter the petitioner got engaged/employed with M/s Himachal Security Services (respondent no.2) and the respondent no.2 vide agreement for supply of manpower provided the services of the petitioner for a period of one year which expired on 31.3.2010 and since the contract was for one year, hence, on the expiry of the said agreement, a fresh agreement was entered into between the respondent no.2 and respondent no.1 for supply of manpower for next year i.e 27.3.2010 to 31.3.2011 and even the petitioner vide his application dated 2.4.2010 had also requested the respondent no.2 to get himself appointed under its employment and the name of the petitioner has been mentioned at serial no. 1 of the list of workers supplied by respondent no.2. The petitioner never remained under the direct or indirect control, supervision or employment or administration of the respondent no.1, who always remained the employee of respondent no.2 (contractor) and was under direct control and supervision of respondent no.2 and the contractor was solely responsible for employment, wages and other statutory payments as envisaged under different Acts/Law applicable to the contract labour and since the petitioner was not the employee of respondent no.1, therefore, compliance of provisions of the Act is not applicable to it and the petitioner has deliberately pleaded the wrong facts. That the respondent no.2 terminated the services of the petitioner for the reason that his services were not found satisfactory. It is denied that the removal of the petitioner was for the reason that he had demanded for continuous and direct employment with the respondent college. The respondent no.1 prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reiterated his allegations as made in the claim petition by denying those of the respondent no.1.

6. Pleadings of the parties gave rise to the following issues which were struck on 30.8.2016.

1. Whether the termination of the services of petitioner w.e.f. 1.6.2010 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled? ...*OPP.*

3. Whether the claim is not maintainable as alleged? ...*OPR.*

4. Whether the petitioner has no locus standi to file and maintain the present petition as alleged? ...*OPR.*

5. Whether the petitioner has concealed material and true facts from this Court as alleged? ...*OPR.*

6. Whether the petitioner is barred by his own acts, conduct and acquiescence from filing and maintaining the present reference petition as alleged? ...*OPR.*

7. Relief.

7. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1	Yes.
Issue no. 2	Entitled to reinstatement with seniority and continuity but without back-wages in the employment of respondent no.1 college.
Issue no. 3	No.
Issue no. 4	No.
Issue no. 5	No.
Issue no. 6	No.
Relief.	Reference answered in favour of the petitioner and against the respondent no.1 per operative part of award.

Reasons for findings

Issues no.1.

9. The AR for the petitioner contended that the petitioner was the worker of respondent no.1 college as he has been appointed directly by the college and the contracts/agreements executed with the contractors are sham, ingenuine and camouflage just to avoid regularization of the petitioner. He further contended that the attendance, payment of wages, sanctioning of leave, issuance of orders to perform the job, immediate control and supervision, day to day supervision and directions etc., were being given to the petitioner by the respondent no.1 college and even the petitioner used to mark his attendance in the attendance register which was being maintained by the respondent no.1 college. He also contended that the petitioner had completed more than 240 days in each calendar year, hence, his services cannot be terminated without complying with the provisions of sections 25-F of the Act. The AR further contended that after the termination of the services of the petitioner the respondent no1. college had retained the persons junior to him and even engaged fresh hands in violation of the provisions of sections 25-G and H of the Act.

10. On the other hand learned counsel for respondent no.1 contended that for the smooth functioning of the respondent no.1 college, the services of some workers including the petitioner were engaged through different contractors. He further contended that the required labourers/ workmen are engaged to assist the regular staff and to undertake the other manual work connected with the functioning of the college who are hired from the contractors after duly entering into the agreements/contracts with them and the wages of the workers are handed over to the contractor who is further liable to pay the same to his workers. He also contended that since the petitioner had not been engaged by the college, who had worked with the respondent college through contractors, hence, there is no need to comply with the provisions of the Act.

11. To prove his case, the petitioner examined two PWs. He himself appeared into the witness box as PW-1 to depose that he was engaged as a Lab. Attendant by the respondent no.1 college on 1.11.2006 and he was working under Doctor Mansi Jain in the Lab. He was engaged directly by the Principal of the College and he had worked till 1.6.2010 on which date his services were terminated. His attendance was used to be marked as a daily wager by Shri Inder Kumar, vide attendance register mark P-1. During his service, he fell ill and remained under treatment of Doctor Namrta Dhar of the College vide treatment slip Ex. PA and the treatment was done free of cost being the staff member. He was the member of the workers union and a settlement was arrived at between the workers union and management on 9.2.2012 and vide clause 7 of the settlement the management had agreed to regularize the services of the contractual employees. His services had been terminated by the Principal of the College, without issuance of any notice, chargesheet and without conducting any enquiry and even no compensation was paid to him. He had worked continuously w.e.f. 1.11.2006 till 1.6.2010 and had completed 240 days in each calendar year and the work which he was doing is of permanent nature. He prayed that he be reinstated in service with all consequential benefits. In cross-examination, he denied that he was working with M/s D.R Tiger Security Services as clerk during the year, 2006 and that from September, 2007 to 31.8.2008, he had worked with Vikas Security Agency. He further denied that from 1.3.2008 to 31.3.2009, he had worked with Jai Durga Security Services and thereafter from 1.4.2009 to 31.3.2010, he had worked with M/s Himachal Security Services and from 1.4.2010 till 1.6.2010 he had worked with respondent no.2 (Punjab Security Services). He also denied that he had fabricated attendance register mark P-1. He denied that he had applied for job with respondent no.2 vide letter dated 2.10.2010. He expressed his ignorance that respondent no.2 supplied the contract labour to respondent no.1. He denied that M/s Punjab Security Services had terminated his services vide letter mark RX-4. He stated that he remained employed from 21.7.2011 till June, 2016 at Pharma Department of Shoolini university. He denied that respondent no.1 college was not paying the salary to him and the same was being paid by various contractors during his service period. He expressed his ignorance that his EPF was being deposited by the contractors from time to time. He denied that he never remained the member of the workers union.

12. PW-2 Shri Pradeep Rana, has stated that he is working as Lab. Assistant in the respondent college and he is also the President of DAV Dental College Employees and workers Union. The petitioner was working as Lab. Assistant and he was the member of the union. The petitioner was not working under any contractor rather he was working under the supervision of Doctor Mansi. The settlement Ex. PW-2/A was executed between the workers union and the management. The wages to the petitioner were being paid by the college administration and his presence was also marked by the Doctors concerned. In cross-examination, he denied that the petitioner was working under the contractor and that the wages to him were being paid by the contractor. He further denied that the petitioner was not the member of the workers union. He also denied that the petitioner was not working under the supervision of Dr. Mansi.

13. On the other hand, the respondent no.1 examined two RWs. RW-1 Shri Inder Kumar, Administrator of respondent no.1 college tendered in evidence his affidavit Ex. RW-1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered in evidence extension of agreement dated 28.3.2005 Ex. R-1, agreement dated 3.2.2003 Ex. R-2, agreement dated 1.9.2007 Ex. R-3, bills raised by the Vikas security Agency Ex. R-4 to Ex. R-12, receipt dated 11.9.2007 Ex. R-13, agreement executed between respondent college and M/s Jai Durga Security Services dated 1.3.2008 Ex. R-14, bill dated 31.3.2009 Ex. R-15, agreement executed between respondent college and Himachal Security Service dated 1.4.2009 Ex. R-16, bills Ex. R-17 to Ex. R-21, agreement dated 27.3.2010 executed between respondent college and M/s Punjab Security Services Ex. R-22, bills generated by Punjab Security Services Ex. R-23 and Ex. R-24, receipts Ex. R-25 to Ex. R-27. In cross-examination, he stated that the respondent college had not sought any permission from the licensing authority to keep the contract labour. He admitted that the respondent college had no registration certificate under the Contract Labour Act. He denied that the contractors were not having the license to deploy manpower. He denied that the job of Lab. Attendant is technical but admitted that the job of Lab Attendant is permanent nature. He denied that the petitioner and other contractual workers are under the supervision of Doctors and that the presence of alleged contract workers is marked by the college and that the work is assigned to the workers by the college. He further denied that the contractors were changed only on papers and that all the agreements allegedly executed with the contractors are fabricated and have not been signed by the contractors. He admitted that the name of Chet Ram is not mentioned in any of the bills. He denied that all the bills have been fabricated by the college.

14. RW-2 Shri Om Chand, Senior Assistant from the office of Regional Provident Fund Organization has deposed that vide letter Ex. R-2/A, he has been authorized to depose in this case and Himachal security Services is registered vide EPF Code No. HP/SML/0001883/000 with RPFC Shimla and as per Form no.9, the petitioner is enrolled under EPF Code no. HP/SML/0001883/000/608, the copy of which is Ex. R-2/B. As per form -6A, Ex. R-2/C, filed by the Himachal Security Services for the financial year 2009 to Feb., 2010, the name of the petitioner is mentioned at serial no. 83 at column no.4 and his wages in the financial years is mentioned as ₹ 37270/- and his EPF contribution is ₹ 4470/-, employer share is mentioned as ₹ 1364 and EPF share is ₹ 3106/-. As per form no. 24 (annual slip) for the years, 2009-2010, 2010-2011 and 2011-12 Ex. R-2/D to Ex. R-2/F, the name of the petitioner is reflected in the aforesaid Exhibits at point A and on the request of petitioner the amount of ₹ 9079/- was remitted to his bank account. In cross-examination, he admitted that Ex. R-2/B has not been signed by any employer. He denied that if form no.9 is not signed by the employer, the same is invalid. He further denied that Ex. R-2/B is fabricated. He admitted that the name of the person who submitted Ex. R-2/B, has not been mentioned in the same.

15. The petitioner had claimed that he was the employee of respondent no.1 college whereas the respondent no.1 had stated that the petitioner was the employee of respondent no.2 contractor. At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour (Regulation and Abolition) Act (hereinafter referred to as Contract Labour Act).

> 7. Registration of certain establishments:- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……
>
> 12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.1 should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.2 should have a licence issued by competent authority i.e the Labour Department to deploy the contract labour. On perusal of the evidence on record, it is clear that neither the principal employer had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-1, Shri Inder Kumar, Administrator of the respondent no.1 college has stated in cross-examination that the respondent no.1 college has no registration certificate under the Contract Labour Act and he also could not produce any licence of respondent no.2 contractor for deploying the contract labour.

16. Now, the question which arises for consideration before this Court is as to whether the contracts were sham, ingenuine and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner was engaged by the respondent no.1 college and he was under its direct control and supervision.

17. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under :

> "36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.
>
> 37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee".

18. For the determination of the question as to whether the contract is a sham, ingenuine and camouflage and whether the petitioner is the employee of the contractor or the principal employer, the Court is required to consider several factors. **In AIR 2004, SC 1639, in case of Workmen of Nilgiri Co-operative Marketing Society Ltd. Vs. Sate of Tamil Nadu, the Hon'ble Apex Court** has observed as under :

> "37. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the court is required to consider several factors which would have a bearing on the result : (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests where for it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.……..

96. The decisions referred to hereinbefore are indicative of the fact that the different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. Emphasis on application of control test and organization test have been laid keeping in view the question as to whether the matter involves a contract of service vis-vis contract for service; or whether the employer had set up a contractor for the purpose of employment of workmen by way of a smoke screen with a view to avoid its statutory liability".

In view of the ratio of the aforesaid judgments and in view of the evidence on record, it can safely be held that the petitioner is the employee of the respondent no.1 college and there exists a relationship of employee and employer between the petitioner and respondent no.1. It is clear from the evidence on record that the petitioner was working as Lab. Assistant under the direct supervision and control of Doctor Mansi Jain in the Laboratory of respondent no.1 college. PW-1 categorically stated that he was working under Doctor Mansi Jain of the respondent no.1 college and his statement has been duly corroborated by PW-2 who also deposed that the petitioner had not worked under any contractor rather he worked under the supervision of Doctor Mansi Jain as Lab. Assistant. Both PW-1 and PW-2 have been cross-examined at length by the learned counsel for respondent no.1 however, nothing favorable could be elicited from their lengthy crossexamination which could lead to the inference that he was the employee of contractors. No evidence has been led on record by the respondent no.1 to prove that the respondent no.2 contractor was giving any directions to the petitioner about the work to be carried out by him. There is no evidence on record to show that either the contractors or their representatives remain present to give any instructions to the petitioner and were supervising his work. PW-1 has deposed that his attendance used to be marked as daily wager by Shri Inder Kumar an official of the respondent no.1 college vide attendance register mark P-1. In cross-examination no suggestion has been put to PW-1 that the attendance register mark P-1 was not of the college. Therefore, from the attendance register, it has become clear that the attendance of the petitioner was being marked by the official of respondent no.1 college. RW-1 admitted in crossexamination that he cannot produce the record of the attendance of the workers maintained by the contractors. Though, RW-1 had produced the payment vouchers/bills allegedly raised by the contractors. However, the perusal of the same shows that the name of the petitioner has not been mentioned in the same. RW-1 admitted in cross-examination that the name of the petitioner Shri Chet Ram is not mentioned in any of the bills. Moreover, the aforesaid bills have not been proved in accordance with law as the signatories of the aforesaid bills have not been examined by respondent no.1. Therefore, from the perusal of the aforesaid bills/ payment vouchers, it cannot be inferred that the salary/wages to the petitioner were being paid by the contractors. There is no other evidence on record to suggest that the salary/wages to the petitioner was being paid by the respondent no.2 contractor and not by the respondent no.1 college. Moreover, RW-1 has also produced the agreements allegedly executed with different contractors which are Ex. R-1 to Ex. R-3, Ex. R-14, Ex. R-16 and Ex. R-22. However, these agreements, have also not been proved in accordance with law as none of the signatories to the aforesaid agreements i.e either the Principal of respondent no.1 college or the contractors had appeared in the witness box to prove the due execution of the aforesaid agreements. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the agreements between the principal employer and the contractor/respondent no.2 are genuine. Though, RW-2, who has brought the record from RPFO has deposed that the petitioner was enrolled under EPF in the return filed by

M/s Himachal Security Services for the financial year 2009-10. However, no evidence has been led by the respondent no.1 to prove that the EPF of the petitioner was ever deposited at any point of time by the so called contractor/respondent no.2 i.e M/s Punjab Security Services. Therefore, also from the statement of RW-2, it cannot be said that the petitioner was the employee of respondent no.2 (contractor). Moreover, in cross-examination, of PW-1, the learned counsel for respondent no.1 college had put the letter dated 2.10.2010 mark RX-1 in order to prove that the petitioner had applied for job with respondent no.2 (contractor), however, the aforesaid letter had been categorically denied by the petitioner. The petitioner had also denied his signatures on the letter mark RX-3 and had also denied that vide letter mark RX-4, the respondent no.2 (contractor) had terminated his services. Further, the aforesaid letters have not been proved by the respondent no.1 college in accordance with law as neither the signatories of the aforesaid letters have appeared in the witness box nor the original letters have been produced before the Court. Therefore, no benefit can be derived by the respondent no.1 college from the aforesaid letters and it cannot be said that the services of the petitioner were terminated by respondent no. 2 (contractor) vide letter mark RX-4.

19. As observed earlier, the evidence, on record further shows that when the petitioner started working with the respondent no.1 college, the respondent college had no certificate of registration and the alleged contractors did not have the necessary licence under the Contract Labour (Regulation and Abolition) Act to deploy the contract labour. **In Secretary, Haryana State Electricity Board Vs. Suresh and other - AIR 1999 SUPREME COURT 1160, i**t is observed that once the so called contractor was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that so called contract system was a mere camouflage, smoke screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the principal employer, on the one hand, and the employees, on the other, could be clearly visualized. In the present case, this is one added factor which shows that the agreements are sham and bogus as the evidence on record shows that neither the respondent no.1 college had a certificate of registration nor the contractors have the licence at the relevant time.

20. Therefore, taking into consideration the above facts and various attending circumstances, it is clear that the contractors had no role to play so far as the petitioner is concerned and everything was supervised and controlled by the respondent no.1 college. The petitioner had been working w.e.f. 1.11.2006 in the establishment of the respondent no.1 college in its premises and his attendance also used to be marked by the respondent no.1. All these facts would show that the agreements were sham, nominal and a mere camouflage. **In Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others, (2001) 7 SCC-1**, the Hon'ble Apex Court has held that If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer. The relevant extract of the aforesaid judgment reads as under :

> "125 (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment

subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder".

In the present case, as observed earlier, it has been proved on record that the so called agreements are not genuine but a mere camouflage as such the petitioner will have to be treated as the employee of the principal employer i.e the respondent no.1 college and he falls under the definition of "workman" as per section 2 (s) of the Act.

21. It has been proved on record that the petitioner had been in continuous service for a long time and definitely for more than one year. It is also not disputed that the petitioner had completed more than 240 days in each calendar year. As such before terminating the services of the petitioner, it was incumbent upon respondent no.1 college to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent no.1 had failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under :

> "34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

In the present case also the respondent no.1 had not complied with the conditions precedent to the retrenchment as per section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner by the respondent no.1 college without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

22. The other plea of the petitioner is to this effect that the fresh hands have been engaged and the persons junior to him have been retained by the respondent no.1 in violation of the principles of "last come, first go". However, there is no evidence placed on record by him to this effect. Even, in his statement, the petitioner has not stated anything about the engagement of fresh hands and retaining of the persons junior to him. The petitioner was under an obligation to prove by leading cogent evidence in this regard but no evidence has been led by the petitioner to prove that fresh hands have been engaged and persons junior to him were retained by the respondent no.1. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be held that the provisions of section 25-G & H of the Act are attracted to the present case and any hostile discrimination was meted out against the petitioner.

23. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f 1.6.2010 by the respondent no.1 college is illegal and unjustified. Accordingly, issue no.1 is decided in favour of the petitioner and against respondent no.1 college.

Issue no. 2

24. Since, I have held under issue no.1, above that the termination of the services of the petitioner w.e.f. 1.6.2010 without complying with the provisions of the Act, is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after his removal from services. The initial burden is on the petitioner to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

27. However, in the present case, the petitioner has admitted in crossexamination that he remained employed from 21.7.2011 till June, 2016 at Pharma Department of Shoolini University. Therefore, in view of his admission, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent no.1 college.

Issue no.3.

28. In support of this issue, no evidence has been led by the respondent no.1. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent no.1.

Issues no.4 to 6.

29. The onus to prove these issues was on respondent no.1. However, neither any evidence has been led by respondent no.1 nor any arguments have been advanced by the learned counsel for the respondent no.1 on these issues. Hence, the same are decided in favour of the petitioner and against respondent no.1.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 6, the claim of the petitioner succeeds and is hereby allowed with the result, the respondent no.1 is directed to reinstate the petitioner in service forthwith with seniority and continuity but without back-wages. The reference is ordered to be answered in favour of the petitioner and against the respondent no.1. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of December, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

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TOWN AND COUNTRY PLANNING DEPARTMENT

FORM -6
(*See* rule - 9)
NOTICE OF ADOPTION OF EXISTING LANDUSE MAP

Shimla, the 20th *February,* 2017

No.HIM/TP/PJT/PA-Sujanpur/1997/Vol-II/19847-64.—Whereas, objections and suggestions were invited *vide* Notice No.HIM/TP/PJT/ PA-Sujanpur/1997/Vol-I/11508-26 dated 17-6-2016 with respect to the Existing Land Use Map for Sujanpur Planning Area under sub-section (1) of section 15 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977); and

Whereas, objections and suggestions were received and the modifications have been made in the said Existing Land Use Map, wherever, required.

Now, therefore, in exercise of the powers vested under sub-section (3) of section 15 of the Act ibid, Notice is given that the Existing Land Use Map for Sujanpur Planning Area is hereby adopted without modifications and a copy thereof is available for inspection during office hours in the following offices:—

1. The Director,
   Town and Country Planning Department,
   Nagar Yojana Bhawan, Block No. 32-A,
   Vikas Nagar, Kasumpati, Shimla,
   Himachal Pradesh

2. The Town and Country Planner,
   Divisional Town Planning Office, Hamirpur,
   District Hamirpur, Himachal Pradesh.

3. The Executive Officer,
   Municipal Council, Sujanpur,
   District Hamirpur, Himachal Pradesh.

The said Existing Land Use Map shall come into operation with effect from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and it shall be conclusive evidence of the fact that the Map has been duly prepared and adopted.

Place: Shimla
Date: 20.2.2017

By order,
SANDEEP KUMAR,
Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla – 171009.

TOWN AND COUNTRY PLANNING DEPARTMENT

FORM -6
(*See* rule - 9)
NOTICE OF ADOPTION OF EXISTING LANDUSE MAP

Shimla, the 20th *February,* 2017

No.HIM/TP/PJT/PA-Bhota/2013/Vol-II/19828-46.—Whereas, objections and suggestions were invited *vide* Notice No.HIM/TP/PJT/ PA-Bhota/2013/Vol-II/11527-44 dated 17-6-2016 with respect to the Existing Land Use Map for Bhota Planning Area under sub-section (1) of section 15 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977); and

Whereas, objections and suggestions were received and the modifications have been made in the said Existing Land Use Map, wherever, required.

Now, therefore, in exercise of the powers vested under sub-section (3) of section 15 of the Act ibid, Notice is given that the Existing Land Use Map for Bhota Planning Area is hereby adopted without modifications and a copy thereof is available for inspection during office hours in the following offices:—

1. The Director,
   Town and Country Planning Department,
   Nagar Yojana Bhawan, Block No. 32-A,
   Vikas Nagar, Kasumpati, Shimla,
   Himachal Pradesh

2. The Town and Country Planner,
   Divisional Town Planning Office, Hamirpur,
   District Hamirpur, Himachal Pradesh.

3. The Secretary,
   Nagar Panchayat Bhota, Tehsil Barsar
   District Hamirpur, Himachal Pradesh.

The said Existing Land Use Map shall come into operation with effect from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and it shall be conclusive evidence of the fact that the Map has been duly prepared and adopted.

Place: Shimla
Date: 20.2.2017

By order,
SANDEEP KUMAR,
Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla – 171009.

TOWN AND COUNTRY PLANNING DEPARTMENT

FORM -6
(*See* rule - 9)
NOTICE OF ADOPTION OF EXISTING LANDUSE MAP

Shimla, the 20th *February,* 2017

No.HIM/TP/PJT/PA-Nadaun/2004/Vol-I/19865-82.—Whereas, objections and suggestions were invited *vide* Notice No. HIM/TP/PJT/PA-Nadaun/2004/Vol-I/805-26 dated 28-4-2016 with respect to the Existing Land Use Map for Nadaun Planning Area under sub-section (1) of section 15 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977); and

Whereas, objections and suggestions were received and the modifications have been made in the said Existing Land Use Map, wherever, required.

Now, therefore, in exercise of the powers vested under sub-section (3) of section 15 of the Act ibid, Notice is given that the Existing Land Use Map for Nadaun Planning Area is hereby adopted without modifications and a copy thereof is available for inspection during office hours in the following offices:—

1. The Director,
   Town and Country Planning Department,
   Nagar Yojana Bhawan, Block No. 32-A,
   Vikas Nagar, Kasumpati, Shimla,
   Himachal Pradesh

2. The Town and Country Planner,
   Divisional Town Planning Office, Hamirpur,
   District Hamirpur, Himachal Pradesh.

3. The Secretary,
   Nagar Panchayat Nadaun,
   Hamirpur District Hamirpur, Himachal Pradesh.

The said Existing Land Use Map shall come into operation with effect from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and it shall be conclusive evidence of the fact that the Map has been duly prepared and adopted.

Place: Shimla
Date: 20.2.2017

By order,
SANDEEP KUMAR,
Director,
Town and Country Planning Department,
Himachal Pradesh, Shimla – 171009.

In the Court of Marriage Officer-cum-**Sub Divisional Magistrate, Sujanpur, District Hamirpur (H. P.)**

1. Rajinder Kumar Bharmoria s/o Shri Amar Singh, r/o Village & P.O. Tihra, Tehsil Sujanpur, District Hamirpur (H.P.).

2. Kusum Kumari d/o Shri Gautam Chand, r/o Village & P.O. Chateru, Tehsil Dharamshala, District Kangra, H.P.

Versus

General Public

Application for the registration of marriage under Section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Shri Rajinder Kumar Bharmoria s/o Shri Amar Singh, r/o Village & P.O. Tihra, Tehsil Sujanpur, District Hamirpur (H.P.) and Kusum Kumari d/o Shri Gautam Chand, r/o Village & P.O. Chateru, Tehsil Dharamshala, District Kangra, H.P. have filed an application alongwith affidavits in this court under Section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 17-01-2017 at Chamunda Mata Mandir Dharamshala, District Kangra, H.P. as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 28-02-2017. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 27-01-2017 under my hand and seal of the court.

Seal.

Sd/-
*Marriage Officer-*cum-*Sub Divisional Magistrate,*
Sujanpur, District Hamirpur (H.P.).

ब अदालत श्री वेद प्रकाश, सहायक समाहर्ता प्रथम / द्वितीय श्रेणी एवं तहसीलदार कुल्लू, जिला कुल्लू, हि0 प्र0

केस नम्बर : 38/C.N.R./T/2017 केस दायर : 31–12–2016 तारीख फैसला : 28–02–2017

जोवन दास पुत्र श्री मीने राम पुत्र श्री पुरनू, निवासी वालाबेहड, डाकघर ढालपुर, तहसील व जिला कुल्लू, हि0 प्र0।

बनाम

आम जनता

राजस्व अभिलेख में नाम की दरुस्ती करने बारे।

जोवन दास पुत्र श्री मीने राम पुत्र श्री पुरनू, निवासी वालाबेहड, डाकघर ढालपुर, तहसील व जिला कुल्लू, हि0 प्र0 ने प्रार्थना–पत्र वराये राजस्व रिकार्ड में नाम दरुस्त करने बारे प्राप्त हुआ है, जिसके अनुसार प्रार्थी का नाम महाल हलेणी (खराहल) व उप मण्डल वन्दल फाटी खराहल कोठी काईस के राजस्व रिकार्ड में जोवन दास पुत्र मीने राम पुत्र पुरनू के स्थान पर जीवन दास पुत्र भीमू पुत्र श्री पुरनू दर्ज है जो कि गलत है प्रार्थी जिसकी दरुस्ती करके वह जोवन दास पुत्र श्री मीने राम पुत्र श्री पुरनू करना चाहता है, इस सम्बन्ध में प्रार्थी द्वारा साक्ष्य के रुप में परिवार रजिस्टर की नकल व जमाबन्दी, आधार कार्ड की प्रति, राशन कार्ड की प्रति भी प्रस्तुत की है।

अतः सर्वसाधारण को इस ईश्तहार के द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति विशेष / सम्बन्धियों को जोवन दास पुत्र स्व0 श्री मीने राम पुत्र श्री पुरनू के नाम की दरुस्ती को उपरोक्त उप महालों के राजस्व रिकार्ड में दर्ज करने बारे कोई उजर / एतराज हो तो वह असालतन व वकालतन दिनांक 28–02–2017 को अदालत हजा में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। इसके पश्चात् कोई भी उजर व एतराज समायत न होगा और नियमानुसार उक्त नाम की राजस्व रिकार्ड में दरुस्ती सम्बन्धी आदेश पारित कर दिए जाएंगे।

आज दिनांक 23–01–2017 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। वेद प्रकाश,
सहायक समाहर्ता प्रथम / द्वितीय श्रेणी एवं तहसीलदार,
कुल्लू, जिला कुल्लू (हि0 प्र0)।

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ब अदालत श्री राम लाल, कार्यकारी दण्डाधिकारी, बन्जार, जिला कुल्लू, हि0 प्र0

तारीख पेशी : 28–02–2017

श्री इन्द्र सिंह पुत्र श्री झावे राम, निवासी धलियाड, डाकघर वठाहड तहसील बन्जार, जिला कुल्लू, हि0 प्र0।

बनाम

आम जनता

प्रार्थना–पत्र जेर धारा 13(3) जन्म पंजीकरण अधिनियम, 1966 के तहत

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसके पुत्र पुष्कर की जन्म तिथि 7–8–2016 को है, जो कि ग्राम पंचायत मशियार के अभिलेख में दर्ज न है और जिसे दर्ज किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी के पुत्र पुष्कर की जन्म तिथि ग्राम पंचायत मशियार के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 28–02–2017 को असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा। तथा एकतरफा कार्यवाही अमल में लाई जाकर जेर धारा 13(3) जन्म पंजीकरण अधिनियम, 1966 के तहत जन्म तिथि के इन्द्राज करने के आदेश पारित किए जायेंगे।

आज दिनांक 30–01–2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, बन्जार, जिला कुल्लू, हि0 प्र0

तारीख पेशी : 28–02–2017

श्री दविन्दर सिंह पुत्र श्री गोविन्द राम, निवासी भ्रीम्बला, डाकघर पलाच, तहसील बन्जार, जिला कुल्लू, हि0 प्र0।

बनाम

आम जनता

प्रार्थना–पत्र हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसने दिनांक 3–12–2015 को श्रीमती मनीषा कौशल पुत्री श्री मान सिंह, गांव बजा, डा0 औट, तहसील औट, जिला मण्डी से विवाह किया है जो कि ग्राम पंचायत पलाच के अभिलेख में दर्ज न है और जिसे दर्ज किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की पत्नी मनीषा कौशल का नाम ग्राम पंचायत पलाच के अभिलेख में दर्ज करने में यदि कोई आपत्ति हो तो वह दिनांक 28–02–2017 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत इन्द्राज करने के आदेश पारित किए जायेंगे।

आज दिनांक 30–01–2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

ब अदालत श्री राम लाल, कार्यकारी दण्डाधिकारी, बन्जार, जिला कुल्लू, हि0 प्र0

श्री कुशाल सिंह पुत्र श्री वली राम, निवासी कोकी, डाकघर पुजाली, तहसील बन्जार, जिला कुल्लू, हि0 प्र0।

बनाम

आम जनता

प्रार्थना–पत्र हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसने दिनांक 20–12–14 को श्रीमती सुनीता देवी पुत्री श्री सेस राम, गांव धलियाड, डा0 बठाहड, तहसील बन्जार, जिला कुल्लू से विवाह किया है जो कि ग्राम पंचायत खावल के अभिलेख में दर्ज न है और जिसे दर्ज किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की पत्नी सुनीता देवी का नाम ग्राम पंचायत खावल के अभिलेख में दर्ज करने में यदि कोई आपत्ति हो तो वह दिनांक 28–02–2017 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एक तरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत इन्द्राज करने के आदेश पारित किए जायेंगे।

आज दिनांक 30–01–2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

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ब अदालत श्री राम लाल, सहायक समाहर्ता द्वितीय श्रेणी, बन्जार, जिला कुल्लू, हि0 प्र0

किस्म मुकद्दमा.––राजस्व रिकार्ड में नाम दरुस्ती बारे।

श्री भगवानी सिंह पुत्र श्री वेद राम, गांव देउठा, डा0 देउठा, तहसील बन्जार, जिला कुल्लू, हि0 प्र0 ने मय शपथ पत्र इस कार्यालय / न्यायालय में प्रार्थना–पत्र इस आशय से गुजार रखा है कि प्रार्थी का नाम राजस्व रिकार्ड में गलती से भवानी सिंह लिखा गया है जो कि गलत है। जबकि मेरा असली नाम अन्य सभी दस्तावेजों में भगवानी सिंह है जो सही नाम है। इसे दरुस्त किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्री भवानी सिंह का नाम राजस्व रिकार्ड में भगवानी सिंह दर्ज करने बारे कोई उजर / एतराज हो तो दिनांक 28–2–2017 तक असालतन व वकालतन अदालत हजा में आकर अपनी आपत्ति पेश करें। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर दरुस्ती बारे आदेश पारित कर दिए जाएंगे।

आज दिनांक 30–1–2017 को मेरे हस्ताक्षर व कार्यलय मोहर द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
बन्जार, जिला कुल्लू।

ब अदालत श्री राम लाल, सहायक समाहर्ता द्वितीय श्रेणी, बन्जार, जिला कुल्लू, हि0 प्र0

किस्म मुकद्दमा.––राजस्व रिकार्ड में नाम दरुस्ती बारे।

श्री सन्तोष कुमार पुत्र श्री मोहर सिंह, गांव धामण, डा0 लारजी, तहसील बन्जार, जिला कुल्लू, हि0 प्र0 ने मय शपथ पत्र इस कार्यालय/न्यायालय में प्रार्थना–पत्र इस आशय से गुजार रखा है कि प्रार्थी का नाम राजस्व रिकार्ड में गलती से सेस राम लिखा गया है जो कि गलत है। जबकि मेरा असली नाम अन्य सभी दस्तावेजों में सन्तोष कुमार है जो सही नाम है। इसे दरुस्त किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्री सेस राम का नाम राजस्व रिकार्ड में संतोष कुमार दर्ज करने बारे कोई उजर/एतराज हो तो दिनांक 28–2–2017 तक असालतन व वकालतन अदालत हजा में आकर अपनी आपत्ति पेश करें। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर दरुस्ती बारे आदेश पारित कर दिए जाएंगे।

आज दिनांक 30–1–2017 को मेरे हस्ताक्षर व कार्यलय मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी,
बन्जार, जिला कुल्लू।

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ब अदालत श्री राम लाल, सहायक समाहर्ता द्वितीय श्रेणी, बन्जार, जिला कुल्लू, हि0 प्र0

किस्म मुकद्दमा.––राजस्व रिकार्ड में नाम दरुस्ती बारे।

श्रीमती भीमा देवी पत्नी श्री भगवानी सिंह, गांव देउठा, डा0 देउठा, तहसील बन्जार, जिला कुल्लू, हि0 प्र0 ने मय शपथ पत्र इस कार्यालय/न्यायालय में प्रार्थना–पत्र इस आशय से गुजार रखा है कि प्रार्थिन का नाम राजस्व रिकार्ड में गलती से दुर्गा लिखा गया है जो कि गलत है। जबकि मेरा असली नाम अन्य सभी दस्तावेजों में भीमा देवी है जो सही नाम है। इसे दरुस्त किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्रीमती दुर्गा का नाम राजस्व रिकार्ड में भीमा देवी दर्ज करने बारे कोई उजर/एतराज हो तो दिनांक 28–2–2017 तक असालतन व वकालतन अदालत हजा में आकर अपनी आपत्ति पेश करें। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर दरुस्ती बारे आदेश पारित कर दिए जाएंगे।

आज दिनांक 30–1–2017 को मेरे हस्ताक्षर व कार्यलय मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी,
बन्जार, जिला कुल्लू।

ब अदालत श्री राम लाल, कार्यकारी दण्डाधिकारी, बन्जार, जिला कुल्लू, हि0 प्र0

तारीख पेशी : 28–02–2017

श्री मनदीप सिंह पुत्र श्री रोशन लाल, निवासी मंगलौर, डाकघर मंगलौर, तहसील बन्जार, जिला कुल्लू, हि0 प्र0।

बनाम

आम जनता

प्रार्थना–पत्र हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम 2004 धारा 4(2) के तहत

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि उसने दिनांक 27–7–2010 को श्रीमती राज लक्ष्मी पुत्री श्री मान सिंह, गांव कलवारी, डा0 कलवारी, तहसील बन्जार, जिला कुल्लू से विवाह किया है जो कि ग्राम पंचायत मंगलौर के अभिलेख में दर्ज न है और जिसे दर्ज किया जाए।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थी की पत्नी राज लक्ष्मी का नाम ग्राम पंचायत मंगलौर के अभिलेख में दर्ज करने में यदि कोई आपत्ति हो तो वह दिनांक 28–02–2017 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करे। तारीख गुजरने के बाद किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत इन्द्राज करने के आदेश पारित किए जायेंगे।

आज दिनांक 30–01–2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
बन्जार, जिला कुल्लू (हि0 प्र0)।

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ब अदालत श्री जवाहर सिंह, कार्यकारी दण्डाधिकारी जुब्बल, जिला शिमला (हि0 प्र0)

श्री रणदीप रोल्टा पुत्र स्व0 श्री प्रताप सिंह, निवासी ग्राम सारी, डा0 हाटकोटी, तहसील जुब्बल, जिला शिमला, हि0 प्र0 .. प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.––दरख्वास्त जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री रणदीप रोल्टा पुत्र स्व0 श्री प्रताप सिंह, निवासी ग्राम सारी, डा0 हाटकोटी, तहसील जुब्बल, जिला शिमला, हि0 प्र0 का प्रार्थना–पत्र उप–मण्डल दण्डाधिकारी रोहडू, जिला शिमला के माध्यम से प्राप्त हुआ है जिसमें प्रार्थी ने निवेदन किया है कि प्रार्थी के पुत्र श्री दिव्यांश रोल्टा की जन्म तिथि 17–10–2006 है जिसका पंजीकरण ग्राम पंचायत सारी के अभिलेख में दर्ज नहीं है जिसके कारण जन्म प्रमाण–पत्र जारी नहीं हो पा रहा है इसलिए प्रार्थी अब अपने पुत्र का नाम व जन्म तिथि सम्बन्धित पंचायत के रिकार्ड में दर्ज करवाना चाहता है।

अतः इस इश्तहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी को भी उपरोक्त प्रार्थी के पुत्र श्री दिव्यांश रोल्टा की जन्म तिथि के इन्द्राज ग्राम पंचायत सारी में दर्ज करने बारे कोई भी उजर व एतराज हो तो वह दिनांक 28–02–2017 को प्रातः 10 बजे या इससे पूर्व किसी भी कार्य दिवस को अदालत हजा में हाजर होकर अपना लिखित व मौखिक एतराज प्रस्तुत करे। यदि उक्त तारीख तक कोई भी उजर या एतराज प्रस्तुत न हुआ तो यह समझा जाएगा कि प्रार्थिया के पुत्र की जन्म तिथि पंजीकरण हेतु किसी को कोई आपत्ति नहीं है तथा ग्राम पंचायत सारी को नाम व जन्म तिथि दर्ज करने के आदेश पारित किए जावेंगे।

आज दिनांक 01–02–2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

जवाहर सिंह,
कार्यकारी दण्डाधिकारी,
जुब्बल, जिला शिमला।

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ब अदालत पी एल शर्मा सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील टिक्कर, जिला शिमला (हि0 प्र0)

मिसल नं0 : 01 / 2017 तारीख मरजुआ : 16–01–2017

श्री श्याम लाल पुत्र स्व0 श्री नहना, निवासी ग्राम नकसेटली, परगना नावर उप–तहसील टिक्कर, जिला शिमला, हि0 प्र0।

बनाम

आम जनता

हरगाह आम जनता को सूचित किया जाता है कि श्याम लाल पुत्र स्व0 श्री नहना, निवासी ग्राम नकसेटली, उप–तहसील टिक्कर ने इस अदालत में अपना नाम दरुस्ती हेतु प्रार्थना–पत्र गुजार रखा है कि उसका नाम मौजा नकसेटली एवं रमटेडी के राजस्व रिकार्ड में शाम लाल पुत्र स्व0 श्री नहना दर्ज है जो कि गलत है, जबकि उसका असल नाम मुताबिक पंचायत रिकार्ड, स्कूल प्रमाण–पत्र, निर्वाचन प्रमाण–पत्र एवं आधार कार्ड के अनुसार श्याम लाल है जिस बारे उपरोक्त प्रार्थी ने यह रिकार्ड आवेदन–पत्र के साथ संलग्न कर अदालत में दायर किया है।

अतः इस विषय में किसी का कोई उजर व एतराज हो तो वह असालतन व वकालतन मिति 08–03–2017 को या इससे पूर्व इस अदालत में प्रस्तुत करें। अन्यथा प्रार्थी के पक्ष में आदेश पारित किए जाएंगे।

आज दिनांक 08–02–2017 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

पी एल शर्मा,
सहायक समाहर्ता द्वितीय श्रेणी,
उप–तहसील टिक्कर, जिला शिमला, हि0 प्र0।

ब अदालत श्री गुरमीत जी0 नेगी, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला, हि0 प्र0

श्री जनेश्वर भाउटा पुत्र श्री मुन्शी राम, निवासी गावणा, तहसील रोहडू, जिला शिमला, हि0 प्र0 ..... प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.––दरख्वास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री मुन्शी राम पुत्र चन्दर लाल, निवासी गावणा, तहसील रोहडू, जिला शिमला, हि0 प्र0 ने प्रार्थना–पत्र गुजार कर निवेदन किया है कि उसके पुत्र जनेश्वर भाउटा का जन्म दिनांक 03–03–1994 को हुआ है परन्तु अज्ञानतावश उसका नाम व जन्म तिथि ग्राम पंचायत कुटाड़ा के जन्म रजिस्टर में आज तक पंजीकृत नहीं किया गया है तथा उसके नाम व जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत कुटाड़ा को दिये जावे।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी उपरोक्त का नाम व जन्म तिथि ग्राम पंचायत कुटाड़ा में दर्ज करने में किसी भी प्रकार का एतराज व उजर हो तो वे दिनांक 27–02–2017 को असालतन व वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर / एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम व जन्म तिथि ग्राम पंचायत में दर्ज करने हेतु कोई आपत्ति नहीं है तथा नाम व जन्म तिथि ग्राम पंचायत कुटाड़ा में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 7–02–2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। गुरमीत जी0 नेगी,
कार्यकारी दण्डाधिकारी,
तहसील रोहडू, जिला शिमला (हि0 प्र0)।

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ब अदालत श्री आर0 डी0 हरनोट, कार्यकारी दण्डाधिकारी (तहसीलदार) नाहन, जिला सिरमौर, हि0 प्र0

श्रीमती सुमन वर्मा पत्नी श्री मोहिन्द्र पाल वर्मा, निवासी मकान नं0 104 / 8 मोहल्ला गुन्नुघाट नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0।

बनाम

आम जनता

श्रीमती सुमन वर्मा पत्नी श्री मोहिन्द्र पाल वर्मा, निवासी मकान नं0 104 / 8 मोहल्ला गुन्नुघाट नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0 ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत आवेदन–पत्र प्रस्तुत करके प्रार्थना की है कि उसके पति मोहिन्द्र पाल वर्मा पुत्र प्रेमचन्द वर्मा जिसकी मृत्यु तिथि 26–03–1992 है, का नाम नगरपालिका परिषद् नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0 के रिकार्ड में दर्ज नहीं करवाया गया, जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 20–03–2017 को प्रातः 10.00 बजे अदालत में उपस्थित आकर प्रस्तुत करें बसूरत दीगर मोहिन्द्र पाल वर्मा पुत्र प्रेमचन्द वर्मा की मृत्यु तिथि को दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 16–02–2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। आर0 डी0 हरनोट,
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर, हि0 प्र0।

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ब अदालत श्री आर0 डी0 हरनोट, कार्यकारी दण्डाधिकारी (तहसीलदार) नाहन, जिला सिरमौर, हि0 प्र0

श्रीमती पूजा चौधरी पत्नी श्री विकास भारद्वाज, निवासी मार्फत श्री बलदेव सिंह, नजदीक एच0एफ0डी0 सी0 बैंक, ऊना रोड़ अम्ब, ग्राम, डा0 व तहसील अम्ब, जिला ऊना, हि0 प्र0।

बनाम

आम जनता

श्रीमती पूजा चौधरी पत्नी श्री विकास भारद्वाज, निवासी मार्फत श्री बलदेव सिंह, नजदीक एच0एफ0डी0 सी0 बैंक, ऊना रोड़ अम्ब, ग्राम, डा0 व तहसील अम्ब, जिला ऊना, हि0 प्र0 ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत आवेदन–पत्र प्रस्तुत करके प्रार्थना की है कि उसकी पुत्री वेदिका जिसकी जन्म तिथि 06–01–2013 है, का नाम नगरपालिका परिषद् नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0 के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 20–03–2017 को प्रातः 10.00 बजे अदालत में उपस्थित आकर प्रस्तुत करें बसूरत दीगर वेदिका की जन्म तिथि को दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 16–02–2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। आर0 डी0 हरनोट,
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर, हि0 प्र0।

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ब अदालत श्री आर0 डी0 हरनोट, कार्यकारी दण्डाधिकारी (तहसीलदार) नाहन, जिला सिरमौर, हि0 प्र0

श्रीमती कौशल गुप्ता पत्नी श्री राजीव गुप्ता, निवासी कच्चा टैंक नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0।

बनाम

आम जनता

श्रीमती कौशल गुप्ता पत्नी श्री राजीव गुप्ता, निवासी कच्चा टैंक नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0 ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत आवेदन–पत्र प्रस्तुत करके प्रार्थना की है कि उसकी पुत्री राशी गुप्ता पुत्री राजीव गुप्ता जिसकी जन्म तिथि 23–06–1985 है, का नाम नगरपालिका परिषद् नाहन, तहसील नाहन, जिला सिरमौर, हि0 प्र0 के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 20–03–2017 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करें बसूरत दीगर राशी गुप्ता पुत्री राजीव गुप्ता की जन्म तिथि को दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 16–02–2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। आर0 डी0 हरनोट,
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर, हि0 प्र0।

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ब अदालत श्री आर0 डी0 हरनोट, कार्यकारी दण्डाधिकारी (तहसीलदार) नाहन, जिला सिरमौर, हि0 प्र0

श्री मोहम्मद इकबाल खान पुत्र स्व0 श्री मोहम्मद हयात खान, निवासी मोहल्ला हरिपुर बगीची, नाहन तहसील नाहन, जिला सिरमौर, हि0 प्र0।

बनाम

आम जनता

श्री मोहम्मद इकबाल खान पुत्र स्व0 श्री मोहम्मद हयात खान, निवासी मोहल्ला हरिपुर बगीची, नाहन तहसील नाहन, जिला सिरमौर, हि0 प्र0 ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत आवेदन–पत्र प्रस्तुत करके प्रार्थना की है कि उसकी जन्म तिथि 20–04–1959 है, का नाम नगरपालिका परिषद् नाहन, तहसील नाहन, जिला सिरमौर के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 20–03–2017 को प्रातः 10.00 बजे इस अदालत में उपस्थित आकर प्रस्तुत करें बसूरत दीगर मोहम्मद इकबाल खान की जन्म तिथि को दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 16–02–2017 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। आर0 डी0 हरनोट,
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर, हि0 प्र0।

सार्वजनिक सूचना

मैं, जीत चन्द सुपुत्र श्री रूलिया राम, निवासी गांव ऐसन, डाकघर जसाणा, तहसील बंगाणा, जिला ऊना, हि0 प्र0, सर्वसाधारण को सूचित करता हूं कि मेरी धर्मपत्नी का नाम सेना रिकार्ड में गलती से बिमल देवी दर्ज है जबकि अन्य सभी दस्तावेजों में उनका सही नाम बिमला देवी ही दर्ज है। अतः उनका सही नाम बिमला देवी माना जाए।

जीत चन्द,
सुपुत्र श्री रूलिया राम,
निवासी गांव ऐसन, डाकघर जसाणा,
तहसील बंगाणा, जिला ऊना, हि0 प्र0।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है